United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

77-1022

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee	§	
VS.	§	Docket No. 77-1022
	§	77-1023
BERNARD WOODMANSEE, SR., JACKY E. DUBRAY and ROY M. HAMLIN Defendants-Appellants	§	77-1024

B

APPEAL FROM THE UNITED STATES DISTRICT COURT FROM THE DISTRICT OF VERMONT

APPELLANTS JOINT APPENDIX

Duncan Frey Kilmartin, Esq.
REXFORD, KILMARTIN & CHIMILESKI
22 Third Street
Newport, Vermont 05855

UNITED STATES COURT OF APPEALS
FILED
MAY 11 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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COPY

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
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CLERK
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UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

BERNARD WOODMANSEE, SR.,
JACKY E. DuBRAY,
ROY M. HAMLIN and
VIRGINIA REYNOLDS

CRIMINAL NO. 76-38

18 U.S.C. §§ 2, 371,
2314 and 2315

COUNT I

The Grand Jury charges:

On or about the 21st day of May, 1976, in the District of Vermont, BERNARD WOODMANSEE, SR., JACKY E. DuBRAY, ROY M. HAMLIN and VIRGINIA REYNOLDS, the defendants, unlawfully, willfully and knowingly did transport in interstate commerce from the State of New York to the State of Vermont, securities, that is, traveler's checks, of a value of more than $5,000, knowing the same to have been stolen, converted and taken by fraud; in violation of §§ 2314 and 2 of Title 18, United States Code.

(2)

COUNT II

The Grand Jury further charges:

On or about the 21st day of May, 1976, in the District of Vermont, BERNARD WOODMANSEE, SR., JACKY E. DuBRAY, ROY M. HAMLIN and VIRGINIA REYNOLDS, the defendants, unlawfully, willfully and knowingly did receive, conceal, store, barter and dispose of securities, that is, traveler's checks of a value of more than $5,000, which were moving as, were a part of and constituted interstate commerce from the State of New York to the State of Vermont, knowing the same to have been stolen, converted and taken by fraud; in violation of §§ 2315 and 2 of Title 18, United States Code.

COUNT III

The Grand Jury further charges:

From on or about April 1, 1976, up to and including May 26, 1976, in the District of Vermont and elsewhere, BERNARD WOODMANSEE, SR., JACKY E. DuBRAY, ROY M. HAMLIN and VIRGINIA REYNOLDS, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate §§ 2314 and 2315 of Title 18, United States Code.

It was part of the conspiracy that the conspirators would transport and cause to be transported in interstate commerce from the State of New York to the State of Vermont, securities, that is, traveler's checks of a value of more than $5,000, knowing the same to have been stolen, converted and taken by fraud, in violation of §§ 2314 of Title 18, United States Code.

It was a further part of the conspiracy that the conspirators would receive, conceal, store, barter, sell and dispose of securities, that is, traveler's checks of a value of more than $5,000, which were moving as, were a part of, and constituted interstate commerce, knowing the same to have been stolen, converted and taken by fraud; in violation of § 2315 of Title 18, United States Code.

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the District of Vermont:

1. On or about May 15, 1976, defendant VIRGINIA REYNOLDS made a telephone call to the State of New York.

2. On or about May 15, 1976, defendants BERNARD WOODMANSEE, SR., and ROY M. HAMLIN had a conversation with each other.

3. On or about May 21, 1976, defendant VIRGINIA REYNOLDS rented an automobile.

4. On or about May 21, 1976, defendants ROY M. HAMLIN and JACKY E. DuBRAY travelled to the vicinity of Burlington, Vermont.

5. On or about May 21, 1976, defendants BERNARD WOODMANSEE, SR., JACKY E. DuBRAY, ROY M. HAMLIN and VIRGINIA REYNOLDS met with Michael Churchill in the vicinity of Burlington, Vermont.

6. On or about May 22, 1976, defendant BERNARD WOODMANSEE, SR. had a conversation with Michael Churchill.

7. On or about May 23, 1976, defendant BERNARD WOODMANSEE, SR. had a conversation with Michael Churchill.

8. On or about May 23, 1976, defendants BERNARD WOODMANSEE, SR., JACKY E. DuBRAY and ROY M. HAMLIN met with Michael Churchill at the Stockyard Restaurant in Montpelier, Vermont.

(18 U.S.C. § 371).

(5)

A TRUE BILL

/s/ WILLIAM H. LEACH
Foreman

/s/ GEORGE W. F. COOK
GEORGE W. F. COOK
United States Attorney

/s/ JEROME J. NIEDERMEIER
JEROME J. NIEDERMEIER
Assistant U. S. Attorney

MAY 26, 1976
(Burlington)

A true copy,
ATTEST:
EDWARD J. TRUDELL, Clerk
BY: Christine M. Wiberg
Deputy Clerk

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO | MINOR OFFENSE MO | MISDEMEANOR MIS | FELONY Fel X

Title/Magistrate Assigned: 210 (District) 2 (Office) 1007 (Disp. Sentence)

U.S. vs. WOODMANSEE, SR., BERNARD (LAST, FIRST, MIDDLE)

JUVENILE

Case Filed Mo. 05 Day 26 Yr. 76 Docket No. 38 De. 1

No. of Defs. *4

U.S. MAG. CASE NO. 76-18F

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:2314 & 2	Trans. int. comm. stolen checks	(1) 1
18:2315 & 2	Conceal. stolen checks	(2) 1
18:371	Consp. to commit above	(3) 1

SUPERSEDING COUNTS

BAIL • RELEASE

Denied | AMT Set $15,000 | Fugitive | Pers. Recog | PSA

Date 5-24-76

conditions: 10% Deposit | X Surety Bond | Collateral | 3rd Pty Cust | Other

Bail Not Made | Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT X	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began 5-23-76	High Risk Date	Information 5-26-76	6-1-76	Trial Set For 10-27-76	Voir Dire 10-27-76	Disposition of Charges 11-7-76	12-6-76
Summons Served	Indict. Waived	1st Plea 6-1-76	NG G NOL	Trial Began 10-27-76	Convicted	On All Charges
First Appearance	Superseding Indict/Info	Final Plea	G. Plea W/Drawn	Trial Ended 11-7-76	Acquitted	On Lesser * Offense(s)
In Charging District		NG G NOL			Dismissed: WOP WP	
					On Government's Motion	

MAGISTRATE

	DATE	INITIAL/NO.
Search Warrant Issued		
Search Warrant Return		
Summons Issued		
Summons Served		
Arrest Warrant Issued	5-23-76	
COMPLAINT	5-23-76	JDF/100A
OFFENSE (in Complaint)	Poss/trans. stolen securities valued more than $5,000.	

INITIAL APPEARANCE DATE 5-23-76 — INITIAL/NO. JDF/100A

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled 5-28-76; Date Held

WAIVED | NOT WAIVED | X INTERVENING INDICTMENT

Tape Number

OUTCOME: DISMISSED | X HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT | HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst. Cook/Niedermeier

ATTORNEYS Defense CJA X Ret Waived Sel None / Other PD CD

~~Saul Agel, Esq.~~
~~101 Main St.~~
~~Burlington, Vt. 05401~~

Duncan F. Kilmartin, Esq.
22 Third Street
Newport, VT 05855
334-7386 12-8-76 - appeal fee

1976 J.S. 3 1977

* Show last names and suffix numbers of other defendants on same indictment/information.

DuBray (2); Hamlin (3); Reynolds (4)

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (B) (D) (C) (E)
1976			
1 May 24		Filed Magistrate's Complaint; Temporary Commitment; Bail Reform Act No. 2 and Appearance Bond.	
5 " 26	"	Indictment.	
" "	"	Record of Grand Jurors concurring.	
June 1		In open Court before Judge Coffrin, defendant Woodmansee present with his attorney, Saul Agel, Esq., for arraignment. George W. F. Cook, Esq. for Government.	
" "		Court makes inquiries of defendant.	
" "		Defendant waives reading of the Indictment and enters a plea of not guilty as to all counts(1 thru 3).	
" "		Ordered: bail continued as previously fixed--travel restrictions, state of Vermont only. All motions should be filed by June 22, 1976.	
15 " 2		Filed Magistrate's Warrant of Arrest returned served.	
16 " "	"	Summons returned served.	
18 " 14	"	Waiver of Deft's Presence.	
36 " 22	"	Deft's Motion for Bill of Particulars.	3 6-22-76 E
37 " "	"	Memorandum in support of Motion for Bill of Particulars.	

FORM AO-256

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW. IN SECTION V. ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

DATE 1976	(DOCUMENT NO.)	IV. PROCEEDINGS (continued) PAGE TWO	V. EXCLUDABLE DELA... Interval Section II (a)	Start Date End Date (b)	Ltr Code (c)	Total Days (d)
June 22	38	Filed Deft's Motion for Discovery and Inspection.				
" "	39	" Memorandum in support of Motion for Discovery and Inspection.				
" "	40	" Deft's Motion to Return and Suppress Evidence.				
" "	41	" Memorandum in support of Motion to Return and Suppress Evidence.				
" "	42	" Certificate of Service on Papers 36 - 41.				
July 2	50	Filed Defendant's motion to surpress evidence.				
" "	51	Filed Defendant's memorandum in support of motion to surpress evidence.				
" "	52	Filed Affidavit of Saul Lee Agel for Deft. in support of motion for return and suppression of evidence.				
July 6	55	Filed Defendant's motion for order permitting inspection.				
" "	56	Filed Defendant's memorandum in support of motion for order permitting inspection.				
" 7	57	Filed response of United States to defendant's Motion to Compel.				
" "	58	" response of United States to defendant's Motion for Bill of Particulars.				
"	59	" response of United States to Defendant's Motion for Discovery & Inspection.				
" "	60	" Certificate of Service.				
July 12	78	Filed certified copy of Search Warrant.				
" 12		In open Court before Judge Coffrin, Saul Agel, Esq. moves to withdraw as counsel for defendant. Jerome O'Neill, Esq. for Government.				
" "		Ordered: motion to withdraw will be granted when substitute counsel has entered appearance on behalf of defendant Woodmansee; said counsel to enter appearance within 48 hours(Mr. Agel to contact substitute counsel).				
" 14	80	Filed Motion by Attorney Saul Lee Agel to Withdraw his appearance for Deft.				
" "	81	" Stipulation re Substitution of Counsel.				
July 16	82	Filed Government's opposition to Defendants' Motion to suppress evidence and Memorandum in support.				
" "	83	Filed hearing for Search warrant May 23,1976 before Hon. Edward J. Costello.				
" 19		In open Court before Judge Coffrin, hearing on defendant's motion to suppress. Duncan Kilmartin, Esq. for defendant; Jerome O'Neill, Esq. for Government. (defendant present in the courtroom)				
" "		Statements made by counsel on question of Affidavit in support of Search Warrant and on issue of probable cause. cont'd.				

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs Bernard Woodmansee, Sr.

(8)

76 | 38 | 1
Yr. | Docket No. | Def.

DATE 1976	(Document No.)	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
July 19		Hearing on question of consent.				
" "		The following witnesses, sworn by Clerk, were examined for Government: Howard R. McMaster, John Moriarty and Fred P. List.				
" "		Hearing continued. Mr. Kilmartin to file motions on behalf of defendant by Thursday, 7/22/76, and will be heard on 7/26/76.				
July 23	84.	Filed defendant's motion for relief from prejudicial joinder.				
" "	85.	" defendant's motion to transfer case to another Federal District Court.				
" 26	86.	Filed Entry of Appearance of Duncan Frey Kilmartin, Esq. for defendant Woodmansee.				
July 26		In open Court before Judge Coffrin, continued hearing on defendant's motions to suppress. Jerome O'Neill, Esq. for Government; Duncan Kilmartin, Esq. for defendant.				
" "		Loren Croteau, sworn by Clerk, was examined for Government.				
" "		Howard R. McMaster was recalled and further examined for Government.				
" "		At 10:55 AM, Government rests.				
" "		Shirley Bushey, sworn by Clerk, was examined by Mr. Agel.				
" "		At 11:25 AM, defendants rests. Government rests. Evidence closed.				
" "		Upon consideration of defendants' motions to suppress, it is				
" "		Ordered: Motions denied -- Court does order the return of firearms & ammunitions to proper parties in this matter.				
" "		Court rules that consent form was duly executed by Mrs. Bushey at the time, place & manner that was testified to by officer Croteau.				
" "		Mr. Kilmartin moves for additional time in which to file memorandum.				
" "		Ordered: Mr. Kilmartin on behalf of defendant Woodmansee has until August 8, 1976, to file memorandum and any other documents in connection with his motions.				
August 10	87	Filed Deft's Memo of Law (Relief from Prejudicial Joinder-Severance)				
" "	88	" Deft's Memo of Law (Venue Change for Prejudice)				
" 11	89.	Filed Response of United States to defendant's Motion for severance.				
" 11	90.	" Response of United States to defendant Woodmansee's motion for transfer.				
Aug. 16		In open Court before Judge Coffrin: Duncan Kilmartin, Esq. for defendant Woodmansee.				

AO 257

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

(9)

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
Aug. 16	(defendant not present) -- Jerome O'Neill, Esq. for Government.				
" "	Statements made re availability of Government's witness, Mr. Churchill.				
" "	Court suggests that U. S. Attorney make arrangements with the Marshal's office so that defendants' counsel may interview Mr. Churchill in Burlington within the next two weeks.				
" "	Ordered: case set for jury trial on October 26, 1976, at 1:30 PM.				
" "	Hearing on defendant's motion for relief from prejudicial joinder.				
" "	Statements made by Mr. Kilmartin and by Mr. O'Neill.				
" "	Ordered: Motion denied.				
" "	Hearing on defendant's motion for change of venue.				
" "	Statements made by Mr. Kilmartin and by Mr. O'Neill.				
" "	Ordered: Motion denied.	3	8-16-76	E	55
Sept. 1	Filed additional grounds in support of motion for protective order and memorandum of points and authorities.	3	9-1-76	E	
" 3	In Chambers before Judge Coffrin, in-camera hearing on Government's motion for protective order. Jerome O'Neill, Esq. for Government.				
" "	Court to issue protective order.(transcript of this hearing will be sent to Court by Court Reporter Joyce Maranville)				
" 7	Filed Order -- defendant's motion for disclosure of Government's witnesses is denied and Government's motion for a protective order is granted. The material made available by the Government for in camera inspection by the Court is ordered to be sealed and made a part of the record for review purposes. Said material shall remain sealed until further order of this, or any appellate Court. Copy mailed to attorney.	3	9-7-76	E	7
Sept. 7	Rec'd envelope containing materia made available by the Government for in camera inspection by the Court.(TO REMAIN SEALED)				
Sept 10	Filed Defendant's motion for severance.	3	9-10-76	E	
Sept. 23	In open Court before Judge Coffrin, hearing on defendant's motion for severance. Duncan Kilmartin, Esq. for Deft. Woodmansee; Jerome O'Neill, Esq. for Government.	3	9-23-76	E	13
" "	Ordered: Motion for severance is denied.				
" "	With respect to sequestration of jury at time of trial -- taken under advisement.				
1 Oct. 14	Filed Subpoena to Testify as to Kay Rainey, returned served.				

AO-257

Interval | Start Date | Ltr. | Total

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs Bernard Woodmansee, Sr.

(10)

76 | 38 | 1
Yr. | Docket No. | Def.

DATE 1976	(Document No.)	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
Oct. 20	104	Filed Order of Sequestration. Copy mailed to attys.				
" 20	105	Filed Order -- 1. Trial to commence on 10/27/76, at 9:30 AM 2. defts. have 12 preemptory challenges jointly 3. Court to conduct the voir dire 4. jury members & alternates will be sequestered 5. objection shall be deemed as to all defendants 6. informal pretrial conference will be held at 3:00 PM on 10/26/76. Copy mailed to attys.				
" 20	106	Filed Motion for relief.				
Oct. 22	108	Filed Government's request of the United States for Voir Dire questions of prospective jurors.				
Oct. 25	110	Filed Report re survey conducted with respect to deft. Woodmansee.				
" 25	111	Filed request of deft. Woodmansee for voir dire questions of prospective jurors.				
26	113	Filed List of Reported appeals on Bernard Woodmansee in the Vt. Supreme Court.				
" "	114	" Memo in support of Change of Venue and Changes in Voir Dire Procedures.				
Oct. 26		In Chambers before Judge Coffrin, informal pretrial conference held. Duncan F. Kilmartin, Esq. for deft. Woodmansee; Jerome O'Neill and Jerome Niedermeier for Government.				
" "		Hearing on motion for relief as to defendant Woodmansee.				
" "		Statements made by Mr. Kilmartin re survey.				
" "		Ordered: Motion for relief denied.				
" 27	116	Filed (2) Subpoenas to testify returned served.				
" 27	117	" (5) Subpoenas to produce document or object returned served.				
" 27	118	Filed Affidavit of H. B. Levine, M. D..				
" 28	120	Filed transcript of Motion for Proctective Order held on September 3, 1976.				
" 25	121	Filed Affidavits of Thomas Crowley and Joseph Wool.				
Oct. 27		In open Court before Judge Coffrin, trial by jury begun. Jerome O'Neill, Esq. and Jerome Niedermeier, Esq. for Government; Duncan F. Kilmartin, Esq. for defendant Woodmansee.				
" "		A jury was impaneled by the Clerk.				
" "		Ordered: that two alternates be impaneled.				
" "		The oath to Petit Jurors in criminal cases was administered to the jury by Clerk.				
" 28		Trial resumed in the presence of the defendant and counsel				
" "		Opening statements were made to the jury by Mr. Niedermeier, and by Mr. Linnan.				
" "		Mr. Kilmartin reserves his opening statement at this time.				
" "		Michael G. Churchill, sworn by Clerk, was examined for Government.				

AO-257

Interval | Stop Date | Log Total

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

(11)

Woodmansee

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
Oct 29	Trial resumed.				
"	Michael G. Churchill was further cross-examined by counsel.				
" "	In Chambers, Mr. Agel moves for severance.				
" "	Mr. Linnan and Mr. Kupersmith joins in motion for severance.				
" "	Ordered: Motion for severance is denied.				
23. Nov. 1	Filed deft. Woodmansee's requests re jurors.				
25. " "	" deft. Woodmansee's request to charge.				
26. " "	" Government's list of federal & state witnesses.				
" "	In Chambers, sttorneys present, hearing on deft. Woodmansee's requests with respect to jurors.				
" "	Ordered: requests denied.				
" "	In Court, Michael G. Churchill was recalled and further cross-examined and examined by counsel.				
27. "	Filed Government's requests to charge & memo.				
" "	The following witnesses, sworn by Clerk, were examined for Government: Mary Foster, Kathleen Yokubytis & Nick Ruggiero.				
" 2	In Court, trial resumed.				
" "	Nick Ruggiero was recalled and further cross-examined and examined by counsel.				
" "	The following witnesses, sworn by Clerk, were examined for Government: Michael LeClair, Wesley Neuman, John M. Moriarty, L. G. Ferguson and Michael D. Zabowsky.				
30. Nov. 3	Filed Government's memorandum of law re grand jury testimony.				
" "	Trial resumed.				
"	Michael Zabowsky was recalled and further examined and cross-examined by counsel.				
" "	Jury excused -- Identification hearing held.				
" "	The following witnesses, sworn by Clerk, were examined by Government: Albert O. Axten and Kay Rainey.				
" "	Mr. Linnan moves for a mistrial on the grounds that witness Rainey was not sequestered before her testimony.				
" "	Ordered: Motion denied.				
" "	Court will permit Mrs. Rainey to testify before the jury.				
" "	Jury present -- The following witnesses, sworn by Clerk, were examined for Government: Kay Rainey, Robert Schlick, Ronald Ceppetelli, Edward Tierney, Joseph Leon, John E. Hess, Jr. and John Curran.				
" 4	Trial resumed.				
" "	The following witnesses, sworn by Clerk, were				

Interval | Start Date | Ltr. | Total

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs Bernard Woodmansee, Sr.

(12)

76 Yr. | 38 Docket No.

DATE 1976	(Document No.)	PROCEEDINGS (continued)	V. EXCLUDABLE D: (a)	(b)	Ic
Nov. 4		examined for Government: Paul G. Dingler, William H. Strickler, Paul Koch, George Contois, Jr. , Fred P. List, Howard McMaster, Norman Rawding and Rita M. Veprauskas.			
" "		Michael D. Zabowsky was recalled and further examined by counsel.			
" "		At the bench, Mr. Kilmartin moves that testimony of witness Koch be stricken.			
" "		Ordered: Motion granted.			
" "		Mr. Kilmartin renews his motion for severance.			
" "		Testimony of Virginia Reynolds was read to the jury			
" "		At 4:00 PM, Government rests.			
" "		Jury excused -- Mr. Kilmartin moves for a verdict for defendant Woodmansee, Sr..			
" "		Ordered: Motion denied.			
" "		Mr. Kilmartin renews his request that each jury be polled at this time.			
" "		Ordered: request denied.			
132." 5		Filed Government subpoena to produce document or object returned served.			
131. " 5		Filed stipulation re fingerprints.			
" 5		Trial resumed.			
" "		Mr. Kilmartin reads stipulation re fingerprints to the jury.			
" "		At 10:20 AM, defendant Woodmansee rests.			
" "		Out of time with leave of Court, George O. Patch, sworn by Clerk, was examined for Government.			
" "		Shirley Bushey, sworn by Clerk, was examined by Mr. Agel.			
" "		At the bench, Mr. Kilmartin moves for a mistrial on grounds of prejudicial testimony by Mrs. Bushey.			
" "		Ordered: Motion denied.			
" "		Albert J. Rousse, sworn by Clerk, was examined for Government in rebuttal.			
" "		At 2:00 PM, Government rests. Defendants rests. Evidence closed.			
" "		In Chambers, attorneys present, all counsel renew their motions previously made at the close of the Government's case.			
" "		Ordered: Motions denied.			
" "		In Court, opening arguments were made to the jury by Mr. Niedermeier for Government, followed by Mr. Kilmartin for defendant Woodmansee.			
" 6		Trial resumed.			
" "		Arguments were made to the jury by Mr. Linnan, Mr. Kupersmith and Mr. Agel.			
" "		Closing arguments were made to the jury by Mr. O'Neill.			

Interval (per Section II) | Start Date / End Date | Ltr. Cod

NITED STATES DISTRICT COURT
RIMINAL DOCKET

Cr. 76-38-1 U.S.A. v. Woodmansee

(13)

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
Nov. 6	Ordered: that Gary Nelson be appointed as Foreman of the jury.				
" "	At 12:05 PM, Court commences the charge to the jury conc uding at 12:50 PM.				
" "	Ordered: that the alternates be excused.				
" "	At 1:00 PM, the jury retires to deliberate the case.				
" "	At 3:00 PM, 3:15 PM & 3:45 PM, the jury come into Court for further instructions, after receiving same, they again retire to further deliberate the case.				
" "	(At 5:00 PM, the two alternates were excused from the area--but not discharged from the case)				
" "	At 8:25 p.m. and at 9:45 p.m., the jury come into Court for further instructions, after receiving same, they again retire to further deliberate the case.				
" "	At 10:30 p.m. the jury is excused for the evening and will resume deliberations at 9:00 a.m. tomorrow.				
" 7	Trial resumed. At 9:00 a.m. the jury again retire to further deliberate the case.				
" "	At 10:40 a.m. the jury come into Court and report a verdict of guilty as to Counts I,II & III,				
" "	At request of counsel - jury was polled by Clerk.				
" "	Jury excused - defendant and counsel present in Court before Judge Coffrin.				
" "	Ordered: that a pre sentence investigation report be made				
" "	Mr. O'Neill moves that deft. Woodmansee be held without bail. Objected to by Mt. Kilmartin.				
" "	ORDERED: Bail continued as presently set. A bail hearing will be scheduled at a later date. Deft. is to present himself to the probation officer tomorrow morning. Government's				
4 " 8	Filed Subpoena/to produce document or object returned served.				
. Nov.12	Filed Government's motion for revocation of bail Bernard Woodmansee, Sr. and memorandum.				
9 " 17	Filed Deft's Rule 34 Motion (Arrest of Judgment)				
0 " "	" Deft's Motion pursuant to Rule 33 (New Trial).				
Nov. 29	In open Court before Judge Coffrin, defendant present with his attorney, Duncan Kilmartin, Esq.; Jerome Niedermeier, Esq. for Government.				
" "	Hearing on defendant Woodmansee's motion for arrest of judgment and on motion for new trial.				
" "	Ordered: Motion denied.				
" "	Hearing on Government's motion for revocation of bail as to defendant Woodmansee.				
" "	Statements made to Court by Mr. Niedermeier and by				

AO-257

Interval (per Section II) | Start Date / End Date | Ltr. Code | Total Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs Woodmansee

(14)

Cr.76 - 38 - 1
Yr. | Docket No. | De

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELA (a)	(b)	(c)	(d)
Nov. 29	Mr. Kilmartin.				
" "	The following witnesses, sworn by Clerk, were examined by Mr. Kilmartin: Gregory McKenzie, Paul Davallou & Gote Sartz.				
" "	Ordered: bail is revoked and defendant is remanded to custody of the U. S. Marshal. (Sentencing is scheduled for December 6, 1976, at 9:00 AM).				
145. Dec. 3	Filed Deft's Subpoena to produce document or object returned served.				
147. Dec. 6	Filed deft. Woodmansee's request for release after conviction and pending appeal.				
148. " 6	" deft. Woodmansee's sentencing motion.				
149. " 6	" deft. Woodmansee's motion to be relieved as counsel for appellate proceedings.				
Dec. 6	In open Court before Judge Coffrin, defendant present with his attorney, Duncan F. Kilmartin, Esq., for sentence. Jerome O'Neill, Esq. and Jerome Niedermeier, Esq. for Government.				
150. " "	Filed Judgment and Probation/Commitment order -- defendant is committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eight years as to counts 1 and 2; sentences to run concurrently with each other. Defendant committed to the custody of the Attorney General or his authorized representative for imprisonment of four years as to count 3; said sentence to run consecutively with sentence imposed in counts 1 and 2.				
" "	Hearing on motion re location of respondent.				
" "	Ordered: that defendant be retained in local facilities pending appeal.				
" "	Hearing on request for release after conviction and pending appeal.				
" "	Ordered: Motion denied.				
" "	Hearing on Mr. Kilmartin's motion to be relieved as counsel for appellate proceedings.				
" "	Ordered: Motion denied. Court suggests that Mr. Kilmartin file motion to withdraw with the second circuit.				
151. Dec. 6	Filed Notice of appeal as to deft. Woodmansee.				
152. " "	" Financial Affidavit of Mr. Woodmansee.				
153. " "	" Appointment of Duncan F. Kilmartin, Esq. as counsel(in appeals court).				
" 8	Mailed copies of Notice of Appeal to U. S. Atty., Duncan F. Kilmartin, Esq., Judge Coffrin, Court Reporter and Clerk, U. S. Court of Appeals for the Second Circuit.				

AO-257 (Over) Interval Start Date Ltr. Tota

TED STATES DISTRICT COURT
MINAL DOCKET

US vs. Woodmansee

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
ec. 15	Filed CJA 21 form re transcript(as to Woodmansee).				
" 20	Filed Government's subpoena to testify returned served.				
" 23	Filed Order -- the previous denial of the respective motions of defendants Woodmansee and Hamlin requesting bail pending appeal are hereby dismissed. Copy mailed to attorneys.				
1977					
Jan 17	Filed Government's motion for return of material provided pursuant to 18 U.S.C. § 3500.				
" 24	" Scheduling Order -- Record to be filed on or before 3-17-77; transcript to be filed on or before 2-15-77.				
Feb. 8	" Scheduling Order -- amended -- transcript to be filed with District Court Clerk 3-17-77; record filed with Circuit Ct. 3-18-77; brief & appendix of appellant be filed4-18-77.				
Feb.10	Filed Government's waiver of hearing on motion for return of 3500 material.				
" 28	" Transcript of hearings on various motions held 7-12-76 & Sentencing held 12-6-76.				
Mar. 2	Filed Transcript of Hearing on Motion for Protective Order.				
" "	Filed Transcript of Hearing on Motion for Severance.				
" "	Filed Transcript of Hearing on Motion for Change of Venue and Motion for Relief.				
" "	Filed Transcript of Hearing on Motion on Relief from Disabilities.				
" "	Filed Transcript of Jury Drawing.				
" 10	Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.				
Mar. 18	Filed Transcript of Trial -Section I. (Original & 3).				
" 21	" Scheduling Order -- Transcript shall be filed with Clerk of Dist. Ct. on or before 4-7-77; Record to be filed on or before 4-11-77.				
" 28	" Transcript of Trial by Jury held or commencing 10-27-76 (Sections 2 & 3).				
" 30	" Transcript of Trial by Jury - Secs. 4 & 5.				
pr. 8	Mailed Supplemental Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.				

Interval | Start Date | Ltr. | Total

CRIMINAL DOdocket

OFFENSE NO. 210 2 1007 | DuBRAY, JACKY E. | 0526 | 76 38 2 | (16)

(LAST, FIRST, MIDDLE) | JUVENILE | No. of Defts 4

U.S. TITLE SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:2314 & 2	Trans. int. comm. stolen checks	(1) 1
18:2315 & 2	Conceal. stolen checks	(2) 1
18:371	Consp. to commit above	(3) 1

SUPERSEDING COUNTS

U.S. MAG CASE NO. 76-19F

BAIL • RELEASE

Denied | AMT Set: $25,000 | Fugitive | Pers Recog | FSA

Date: 5-25-76 | Conditions: X 10% Deposit | Surety Bond | Collateral | Bail Not Made | Status Changed | Bail Exon. | Bail Forf. | Cust. | Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began	INDICTMENT X / Information	ARRAIGNMENT	TRIAL	SENTENCE
5-23-76 Summons Served	5-26-76	6-1-76	Trial Set For 10-27-76	Disposition of Charges 11-7-76
First Appearance	High Risk Date	1st Plea 6-1-76	Voir Dire 10-27-76	12-13-76
	Indict. Waived	Final Plea	Trial Began 10-27-76	Convicted / Acquitted / Dismissed: WOP: WP / On Government's Motion
	In Charging District		Trial Ended 11-7-76	On All Charges / On Lesser Offense(s)
	Superseding Indict/Info	NG G NOL / G. Plea W/Drawn / NG G NOL	NG G NOL	

MAGISTRATE

	DATE	INITIAL/NO
Search Warrant Issued / Returned		
Summons / Warrant / Rule 40 / Appointment of Counsel	5-23-76	JDF/100A

INITIAL APPEARANCE DATE: 5-23-76 | INITIAL/NO: JDF/100A

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Requested 5-28-76 / Date Held

OUTCOME: DISMISSED / X HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT / HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

WAIVED / NOT WAIVED / X PREVENTING INDICTMENT | TAPE NUMBER

OFFENSE AS CHARGED: Trans. & Poss. of stolen securities, with value more than $5,000.

U.S. ATTORNEY: Cook/Niedermeier

ATTORNEYS: X Retained / Other

~~Stephen Schuster, Esq. 862-6511~~
~~117 St. Paul St., Burlington, VT 05401~~
James D. Linnan, Esq. & Lloyd Portnow, Esq.
112 State Street Suite 1109, Albany NY 12207 117 St. Paul St., Burl., Vt.
SS# 105-38-7759 (518-449-5230)

Woodmansee (1); Hamlin (3); Reynolds (4)

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
1976			
2 May 24		Filed Magistrate's Complaint; Temporary Commitment; Bail Reform Act No. 2.	
4 " 25		" Appearance Bond.	
5 " 26		" Indictment.	
" "		" Record of Grand Jurors concurring.	
10 " 28		" Notice of Appearance of Stephen M. Schuster, Jr.	
June 1		In open Court before Judge Coffrin, defendant DuBray present with his attorney, Stephen Schuster, Esq., for arraignment. George W. F. Cook, Esq. for Government.	
" "		Court makes inquiries of defendant.	
" "		Defendant waives reading of the Indictment and enters a plea of not guilty as to all counts(1 thru 3).	
" "		Ordered: bail continued as previously fixed -- travel restrictions: Vt. & N.Y.. All motions should be filed by June 22, 1976.	
12. " "		Filed waiver of defendant Dubray's presence.	
43. " 25		Filed Deft's Motion for Compel.; Affidavit & Memorandum.	6-25-76 E
44 " "		" Deft's Motion for Separate Trial and Relief from	

FORM AO-257

June 25 Prejudicial Joinder; Affidavit and Memorandum.
" " Filed Deft's Motion to Suppress; Affdavit and Memo.
" " " Deft's Motion for Bill of Particulars & Memo.
" " " Deft's Motion for Transfer & Memorandum.
" " " Deft's Motion pursuant to 18 USC §2518 & Memo.
" " " Deft's Motion for Discovery and Inspection and Memorandum.
July 7 Filed response of United States to defendant's Motion to Suppress.
" " " response of United States to defendant's Motion for Bill of Particulars.
" " " response of United States to defendant's Motion to Compel.
" " " response of United States to defendant's Motion for separate trial and relief from prejudicial joinder.
" " " response to Motion to Transfer.
" " " response of United States to defendant's Motion for Discovery and Inspection.
" " " Certificate of Service.
" 12 In open Court before Judge Coffrin, hearing on defendant's motion for relief from prejudicial joinder and for severance. Jerome O'Neill, Esq. for Government; Stephen Schuster, Esq. for deft. DuBray.
" " Kathleen Frankovich, sworn by Clerk, was examined by Mr. Agel.
" " Ordered: Motion for severance is denied.
" 12 Filed Government's motion for protective order.
" " Upon consideration of Government's motion for protective order, it is
" " Taken under advisement.
" " Hearing on defendant's motion to compel.
" " Ordered: Motion granted.
" " Hearing on defendant's motion for Bill of Particulars.
" " Government's response to Bill of Particulars is satisfactory(per Court).
" " Hearing on motion pursuant to 18 U.S.C., Section 2518.
" " Ordered: Motion granted.
" " Upon consideration of defendant's motion for transfer, it is
" " Ordered: Motion denied.
" " Upon consideration of defendant's motion for discovery and inspection, it is
" " Ordered: Motion granted.
July 16 Filed Govt's Opposition to Defts' Motion to suppress evidence & Memorandum in support.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs DuBray, Jacky E.

(18)

76 38 2
Yr. | Docket No. | De

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELA (a)	(b)	(c)	(d)
83 July 16	Filed hearing for Search warrant May 23, 1976 before Hon. Edward J. Costello.				
July 19	In open Court before Judge Coffrin, hearing on defendant's motion to suppress. Stephen Schuster, Esq. for defendant; Jerome O'Neill, Esq. for Government.(defendant not present.				
" "	Statements made by counsel on question of Affidavit in support of Search Warrant and on issue of probable cause.				
" "	Hearing on question of consent.				
" "	The following witnesses, sworn by Clerk, were examined for Government: Howard R. McMaster, John Moriarty and Fred P. List.				
	Hearing continued until 7/26/76.				
July 26	In open Court before Judge Coffrin, continued hearing on defendants' motions to suppress. Jerome O'Neill, Esq. for Government; Stephen Schuster, Esq. for defendant.				
" "	Loren Croteau, sworn by Clerk, was examined for Government.				
" "	Howard R. McMaster was recalled and further examined for Government.				
" "	At 10:55 AM, Government rests.				
" "	Shirley Bushey, sworn by Clerk, was examined by Mr. Agel.				
" "	At 11:25 AM, defendants rests. Government rests. Evidence closed.				
" "	Upon consideration of defendants' motions to suppress, it is				
" "	Ordered: Motions denied -- Court does order the return of firearms & ammunitions to proper parties in this matter.				
" "	Court rules that consent form was duly executed by Mrs. Bushey at the time, place & manner that was testified to by officer Croteau.	3	7-26-76	E	31
Aug. 16	In open Court before Judge Coffrin: Stephen Schuster, Esq. for defendant DuBray. (defendant not present) Jerome O'Neill, Esq. for Government.				
" "	Statements made re availability of Government witness, Mr. Churchill.				
" "	Court suggests that U. S. Attorney make arrangements with the Marshal's office so that defendants' counsel may interview Mr. Churchill in Burlington within the next two weeks.				
" "	Ordered: case set for jury trial on October 26,				

(19)

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
Aug. 16	1976, at 1:30 PM.				
. Sept. 7	Filed Order -- defendant's motion for disclosure of Government's witnesses is denied and Government's motion for a protective order is granted. The material made available by the Government for in-camera inspection by the Court is ordered to be sealed and made a part of the record for review purposes. Said material shall remain sealed until further order of this, or any appellate Court. Copy mailed to attorney.				
. " 7	Received envelope containing material made available by the Government for in-camera inspection by the Court. (TO REMAIN SEALED)				
Sept.20	Filed Stephen M. Schuster, Jr., Esq.'s motion to withdraw.				
30	Filed Notice of Appearance of James D. Linnan for defendant Jacky DuBray				
0 Oct. 12	Filed Affidavit of James D. Linnan, Esq.				
2 " 18	" Entry of Appearance of James D. Linnan, Esq.				
7 " 22	Filed Motion--challenges upon the drawing of the jury, and memorandum in support of motion.				
. Oct.25	Filed deft. DuBray's voir dire of jurors.				
Oct. 26	In Chambers before Judge Coffrin, informal pretrial conference held. James D. Linnan, Esq. & Lloyd Portnow, Esq. appears for Defendant DuBray; Jerome O'Neill & Jerome Niedermeier. for Government.				
" "	Mr. Linnan joins in motion for relief.				
" "	Ordered: Motion for relief is denied.				
" 27	In open Court before Judge Coffrin, trial by jury begun. Jerome O'Neill, Esq. and Jerome Niedermeier., Esq. for Government. James D. Linnan, Esq. for deft. DuBray.				
" "	A jury was impaneled by Clerk.				
" "	Ordered: that two alternates be impaneled.				
" "	The oath to Petit Jurors in criminal cases was administered to the jury by Clerk.				
" 28	Trial resumed.				
" "	Opening statements were made to the jury by Mr. Niedermeier and by Mr. Linnan.				
" "	Michael G. Churchill, sworn by Clerk, was examined for Government.				
Oct. 29	Trial resumed.				
" "	Michael G. Churchill was recalled and cross-examined by counsel.				
" "	In Chambers, Mr. Agel moves for severance; Mr. Linnan and Mr. Kupersmith joins in motion for severance.				

Interval | Start Date | Ltr. | Total

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs DuBray, Jacky E.

(20)

76 38

Yr. | Docket No. | D

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELA (a)	(b)	(c)	(c
Oct. 29	Ordered: motion for severance is denied.				
22 Nov. 1	Filed appearance of Lloyd A. Pornow, Esq. for deft. DuBray.				
" "	Trial resumed.				
" "	Michael G. Churchill was recalled and further cross-examined and examined by counsel.				
" "	At the bench, Mr. Linnan moves for a mistrial on behalf of deft. DuBray due to prejudicial testimony by Mr. Churchill.				
" "	Ordered: Motion for mistrial is denied.				
" "	The following witnesses, sworn by Clerk, were examined for Government: Mary Foster, Kathleen Yokubytis & Nick Ruggiero.				
" 2	In Court, trial resumed.				
8 " "	Filed deft. DuBray's request to charge.				
" "	Nick Ruggiero was recalled and further cross-examined and examined by Counsel.				
" "	The following witnesses, sworn by Clerk, were examined for Government: Michael LeClair, Wesley Neuman, John M.Moriarty, L. G. Ferguson and Michael D. Zabowsky.				
Nov. 3	Trial resumed.				
" "	Michael Zabowsky was recalled and further examined and cross-examined by counsel.				
" "	Jury excused -- Identification hearing held.				
" "	The following witnesses, sworn by Clerk, were examined for Government: Albert O. Axten and Kay Rainey.				
" "	Mr. Linnan moves for a mistrial on the grounds that witness Rainey was not sequestered before her testimony.				
" "	Ordered: Motion denied.				
" "	Court will permit Mrs. Rainey to testify before the jury.				
" "	Jury present -- The following witnesses, sworn by Clerk, were examined for Government: Kay Rainey, Robert Schlick, Ronald Ceppetelli, Edward Tierney, Joseph Leon, John E. Hess, Jr. and John Curran.				
" 4	Trial resumed.				
" "	The following witnesses, sworn by Clerk were examined for Government: Paul G. Dingler, William H. Strickler, Paul Koch, George Contois, Jr., Fred P. List, Howard McMaster, Norman Rawding and Rita M. Veprauskas.				
" "	Michael D. Zabowsky was recalled and further examined by counsel.				
" "	At the bench, Mr. Kilmartin moves that testimony				

AO-257

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

(21)

DATE 1976	PROCEEDINGS (continued) (Document No.)
Nov. 4	of witness Koch be stricken.
" "	Ordered: Motion granted.
" "	Testimony of Virginia Reynolds was read to the jury.
" "	At 4:00 PM, Government rests.
" "	Jury excused -- Mr. Linnan moves that case against defendant DuBray be dismissed.
" "	Ordered: Motion denied.
" "	Mr. Linnan moves for a directed verdict on behalf of defendant DuBray.
" "	Ordered: Motion denied.
" 5	In Chambers, attorneys present, Mr. Linnan renews his motion for judgment of acquittal as to defendant DuBray.
" "	Ordered: Motion denied.
" "	Mr. Linnan moves for dismissal as to deft. DuBray.
" "	Ordered: Motion denied.
" "	Mr. Linnan moves for a mistrial on grounds of failure of severance.
" "	Ordered: Motion denied.
" "	Mr. Linnan moves for a jury view.
" "	Ordered: Motion denied.
" "	At 10:20 AM, defendant DuBray rests.
" "	Out of time with leave of Court, George O. Patch, sworn by Clerk, was examined for Government.
" "	Albert J. Rousse, sworn by Clerk, was examined for Government. in rebuttal.
" "	At 2:00 PM, Government rests. Defendants rests. Evidence closed.
" "	In Chambers, attorneys present, all counsel renew their motions previously made at the close of the Government's case.
" "	Ordered: Motions denied.
" "1	In Court, opening arguments were made to the jury by Mr. Niedermeier for Government, followed by Mr. Kilmartin for defendant Woodmansee.
" "6	Trial resumed.
" "	Arguments were made to the jury by Mr. Linnan, Mr. Kupersmith and Mr. Agel.
" "	Closing arguments were made to the jury by Mr. O'Neill.
" "	Ordered: that Gary Nelson be appointed as Foreman of the jury.
" "	At 12:05 PM, the Court commences the charge to the jury concluding at 12:50 PM.
" "	Ordered: that the alternates be excused.
" "	At 1:00 PM, the jury retires to deliberate the case.
" "	At 3:00 PM, 3:15 PM & 3:45 PM, the jury come into Court for further instructions, after receiving same, they again retire to further deliberate the case.

V. EXCLUDABLE DELAY (a) (b) (c) (d)

257

Interval | Start Date | Ltr | Total

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs Jacky E. DuBray

76

Yr. | Docket No.

DATE 1976	(Document No.)	PROCEEDINGS (continued)	V. EXCLUDABLE DEL (a)	(b)	(c)
Nov. 6		(At 5:00 PM, the two alternates were excused from the area--but not discharged from the case)			
" "		at 8:25 p.m. and at 9:45 p.m., the jury come into Court for further instructions, after receiving same, they again retire to further deliberate the case.			
" "		At 10:30 p.m. the jury is excused for the evening and will resume deliberations at 9:00 a.m.tomorrow			
" 7		Trial resumed. at 9:00 a.m. the jury again retire to further deliberate the case.			
" "		At 10:40 a.m. the jury come into court and report a verdict of not guilty as to Count I and guilty as to Counts II & III.			
" "		At request of counsel - jury was polled by Clerk.			
" "		Jury excused - defendant and counsel present in Court before Judge Coffrin.			
" "		ORDERED: that a pre sentence investigation report be made.			
		Mr. O'Neill requests that bail be continued as presently fixed. Court makes inquiries of deft.			
" "		ORDERED: Bail continued.			
" "		Mr. Linnan moves that deft's bail be reduced.			
" "		ORDERED: request denied.			
" "		Defendant is to present himself to the probation officer tomorrow morning.			
36 " 11		Filed Motion pursuant to Rule 33 (for new trial) and memorandum in support			
154. Dec. 6		Filed notice of readiness of pre-sentence report as to deft. DuBray.			
[illegible]. 13		In Court before Judge Coffrin, hearing on deft. DuBray's motion for new trial. James D. Linnan, Esq. for DuBray; Jerome O'Neill, Esq. for Government.			
" "		Ordered: Motion denied.			
" "		Defendant DuBray present with his attorney for sentence.			
159." "		Filed Judgment and Probation/Commitment Order as to deft. DuBray -- defendant is committed to the custody of the Attorney General or his authorized representative for a period of five years as to count 2. Defendant committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years as to count 3. Sentences to run concurrently with each other.			
" "		Court advises defendant of his right to appeal.			
60. " 13		Filed Financial Affidavit of Mr. DuBray.			
61 " 13		" Appointment of James D. Linnan, Esq. as			

AO-257

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DuBray

(23)

DATE 1976	(Document No.)	PROCEEDINGS (continued)	V. EXCLUDABLE DELA (a)	(b)	(c)	(d)
Dec. 13		counsel for deft. DuBray(in appeals court).				
" "		(In Court) -- Mr. Linnan moves that bail be continued pending appeal.				
" "		Ordered: bail continued pending appeal.				
" "		Filed deft's. Notice of Appeal. Mailed copy to James D. Linnan, Esq., U. S. Atty., Judge Coffrin, Court Reporters and Clerk, U. S. Court of Appeals.				
" "		" Motion of James Linnan, Esq., to be relieved as counsel for appellate procedure or to be assigned pursuant to the Criminal Justice Act to perfect the appeal; Request for release after conviction and pending appeal.				
Dec. 15		Filed CJA 21 form re transcript(for DuBray).				
" 15		" CJA 21 form re transcript (for DuBray).				
1977						
Jan. 24		" Scheduling Order - Record to be filed on or before 3-17-77; transcript to be filed on or before 2-15-77. (See 76-38-1)				
Feb. 8		" Scheduling Order -- amended -- transcript to be filed with District Court Clerk 3-17-77; record filed with Circuit Ct. 3-18-77; brief & appendix of appellant be filed 4-18-77. (See Woodmansee)				
1977						
Mar. 10		Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.				
Apr. 8		" Supplemental record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.				

210 2 1007 | HAMLIN, ROY M. COPY 05 26 76 38 (24)

4

U.S. TITLE SECTION	OFFENSES CHARGED	ORIGINAL COUNTS	
18:2314 & 2	Trans. int. comm. stolen checks	(1)	1
18:2315 & 2	Conceal stolen checks	(2)	1
18:371	Consp. to commit above	(3)	1

U.S. MAG CASE NO. 76-20F

BAIL • RELEASE

Denied | Amt Set $ 15,000 | Fugitive | Pers Re | PSA

Date 5-24-76

X Bail Not Made

X Status Changed (See Docket)

condition: 10% Depo | X Surety Bo | Collateral | 3rd Pty Cust

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT X	ARRAIGNMENT	TRIAL	SENTENCE
US Custody Began 5-23-76	High Risk Date	Information 5-26-76	6-1-76	Trial Set For 10-27-76	Voir Dire 10-27-76	Disposition of Charges 11-7-76	12-13-
Summons Served	Indict. Waived		1st Plea 6-1-76	NG G NOL	Trial Began 10-27-76	Convicted	On All Cha
First Appearance	In Charging District	Superseding Indict/Info	Final Plea	G Plea W/Drawn	Trial Ended 11-7-76	Acquitted	On Lesser Offense(s)
				NG G NOL		Dismissed	WOP
						On Government's Motion	

SUPERSEDING COUNTS

MAGISTRATE

DATE	INITIAL NO.	INITIAL APPEARANCE DATE	PRELIM. NO.	OUTCOME
5-23-76	JDF/100A	5-23-76	JDF/100A	X DISMISSED; HELD FOR DIST. OR OTHER PROCEEDING IN THIS DISTRICT

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled 5-28-76; Date Held

WAIVED / NOT WAIVED — TYPE NUMBER

X INDICTMENT / INFORMATION

HELD FOR DIST. OR OTHER PROCEEDING IN DISTRICT BELOW

Poss/trans. stolen securities valued more than $5,000

1976

Cook/Niedermeier

ATTORNEYS

X Michael S. Kupersmith, Esq. 862-4288
284 So. Union St., Burlington, VT

JAN 5 1977 J.S. 3

Woodmansee (1); DuBray (2); Reynolds (4)

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (A) (B) (C)
1976			
3 May	24	Filed Magistrate's Complaint; Temporary Commitment; Bail Reform Act No. 2; Financial Affidavit; and Appointment of Counsel.	
5 "	26	" Indictment.	
"	"	" Record of Grand Jurors concurring.	
6 "	27	Filed Defendant's Motion for review of conditions of pre-trial release.	
7 "	"	Filed Affidavit of Defendant, in Support of Motion to review of conditions of pre-trial release.	
8 "	"	Filed Memorandum in support of Defendant's motion to review conditions of pre-trial release.	
9 "	"	Filed Certificate of service for paper Nos. 6,7 and 8.	
11 "	28	" Bail Reform Act No. 2--$8,000 with 10% deposit.	
June 1		In open Court before Judge Coffrin, defendant Hamlin present with his attorney, Michael Kupersmith, Esq., for arraignment. George W. F. Cook, Esq. for Government.	
"	"	Court makes inquiries of defendant.	
"	"	Defendant waives reading of the Indictment and enters a plea of not guilty as to all counts(1 thru 3).	

FORM AO 256

DATE 1976	IV PROCEEDINGS (continued) PAGE TWO	V EXCLUDABLE DELAY
	DOCUMENT NO.	Interval (a) / Start Date End Date (b) / Ltr Code (c) / Total Days (d)
June 1	Ordered: bail is $ 8,000.00 with 10% deposit as set by U. S. Magistrate; defendant remanded to the custody of the U. S. Marshal for want of bail. All motions should be filed by June 22, 1976.	
4." 2	Filed Appearance Bond for Roy Hamlin -- 10% deposit of $ 8,000.00 ($800.00 cash).	
" 22	Filed Deft's Motion pursuant to 18 USC §2518 and Memo.	3 6-22-76 E
" "	" Deft's Motion for Bill of Particulars; Demand for Bill of Particulars; and Memorandum.	
" "	" Deft's Motion for Discovery; Affidavit; and Memorandum.	
" "	" Deft's Motion to Compel; Affidavit; and Memo.	
" "	" Deft's Motion for Relief from Prejudicial Joinder; Affidavit; and Memorandum.	
" "	" Deft's Motion to Suppress; Affidavit and Memo.	
July 7	Certificate of Service on Papers 20-25.	
" "	Filed response of United States to defendat's Motion for Bill of Particulars.	
" "	" response of United States to defendant's Motion to Compel.	
" "	" response of United States to defendant's Motion for relief from prejudicial joinder.	
" "	" response of United States to defendant's Motion for Discovery.	
" "	" response of United States to defendant's Motion to Suppress.	
" 12	" Certificate of Service.	
uly 12	Filed Waiver of defendant Hamlin's presence.	
	In open Court before Judge Coffrin, hearing on defendant's motions pursuant to 18 U.S.C., Section 2518. Jerome O'Neill, Esq. for Government; Michael Kupersmith, Esq. for defendant.	
	Ordered: Motion granted.	
	Hearing on deft. Hamlin's motion for Bill of Particulars.	
"	Government's response to Bill of Particulars is satisfactory(per Court).	
"	Hearing on defendant's motion for discovery.	
"	Ordered: Motion granted. Government to comply.	
"	Hearing on defendant's motion to compel.	
"	Ordered: Motion granted.	
"	Hearing on defendant's motion for relief from prejudicial joinder and for severance.	
	Kathleen Frankovich, sworn by Clerk, was examined by Mr. Agel. cont'd.	

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER
2-76	25845 - $800.00				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs Roy M. Hamlin

76 (26) 38
Yr. Docket No.

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DEL (a)	(b)	(c)
July 12	Ordered: motions for severance are denied.			
" 12	77. Filed Government's motion for protective order.			
" "	Upon consideration of Government's motion for protective order, it is			
" "	Taken under advisement.			
82 July 16	Filed Government's opposition to Defendants' motion to suppress evidence and Memorandum in support			
83 " "	Filed hearing for search warrant May 23, 1976 before Hon. Edward J. Costello.			
July 19	In open Court before Judge Coffrin, hearing on defendant's motion to suppress. Michael Kupersmith, Esq. for defendant; Jerome O'Neill, Esq. for Government. (defendant not present)			
" "	Statements made by counsel on question of Affidavit in support of Search Warrant and on issue of probable cause.			
" "	Hearing on question of consent.			
" "	The following witnesses, sworn by Clerk, were examined for Government: Howard McMaster, John Moriarty and Fred P. List.			
" "	Hearing continued until 7/26/76.			
" 26	In open Court before Judge Coffrin, continued hearing on defendants' motions to suppress. Jerome O'Neill, Esq. for Government; Michael S. Kupersmith, Esq. for defendant.			
" "	Loren Croteau, sworn by Clerk, was examined for Government.			
" "	Howard R. McMaster was recalled and further examined for Government.			
" "	At 10:55 AM, Government rests.			
" "	Shirley Bushey, sworn by Clerk, was examined by Mr. Agel.			
" "	At 11:25 AM, defendants rests. Government rests. Evidence closed.			
" "	Upon consideration of defendants' motions to suppress, it is			
" "	Ordered: Motions denied -- Court does order the return of firearms & ammunitions to proper parties in this matter.			
" "	Court rules that consent form was duly executed by Mrs. Bushey at the time, place & manner that was testified to by officer Croteau.	3	7-26-76	E 3
Aug. 16	In open Court before Judge Coffrin: Michael S. Kupersmith, Esq. for defendant Hamlin; (defendant Hamlin not present)-- Jerome O'Neill, Esq. for Government.			

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ED STATES DISTRICT COURT
INAL DOCKET

(27)

DATE 976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DE (a)	(b)	(c)
. 16	Statements made re availability of Government witness, Mr. Churchill.			
"	Court suggests that U. S. Attorney make arrangements with the Marshal's office so that defendants' counsel may interview Mr. Churchill in Burlington within the next two weeks.			
"	Ordered: case set for jury trial on October 26, 1976, at 1:30 PM.			
pt. 7	Filed Order -- defendant's motion for disclosure of Government's witnesses is denied and Government's motion for a protective order is granted. The material made available by the Government for in-camera inspection by the Court is ordered to be sealed and made a part of the record for review purposes. Said material shall remain sealed until further order of this, or any appellate Court. Copy mailed to attorney.			
7	Received envelope containing material made available by the Government for in-camera inspection by the Court. (TO REMAIN SEALED)			
t 15	Filed Defendant's motion on severance - rule 14.	3	9-15-76	E
pt.23	Filed defendant Hamlin's memorandum in support of motion for relief from prejudicial joinder.			
t. 23	In open Court before Judge Coffrin, hearing on motion for severance. Jerome O'Neill, Esq. for Government.			
"	Ordered: Motion for severance is denied.			
"	With respect to sequestration of jury at time of trial -- taken under advisement.	3	9-23-76	E
t. 19	Filed Defendant's Motion for relief and memorandum in support.			
26	Filed deft. Hamlin's request for voir dire.			
t. 26	In Chambers before Judge Coffrin, informal pretrial conference held. Michael Kupersmith, Esq. for defendant Hamlin; Jerome O'Neill & Jerome Niedermeier for Government.			
"	Mr. Kupersmith joins in motion for relief.			
"	Ordered: motion for relief is denied.			
27	Filed deft. Hamlin's application for subpoenas.			
28	Filed Order re motion of defendant Hamlin for subpoenas pursuant to Rule 18(b).			
27	In open Court before Judge Coffrin, trial by jury begun. Jerome O'Neill, Esq. and Jerome Niedermeier, Esq. for Government; Michael S. Kupersmith, Esq. for defendant Hamlin.			
"	A jury was impaneled by the Clerk:			
"	Ordered: that two alternates be impaneled.			

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs Roy M Hamlin

76 Yr. | 38 Docket No. | (28)

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DEL (a)	(b)	(c)
Oct. 27	The oath to Petit Jurors in criminal cases was administered to the jury by Clerk.			
" 28	In Chambers, hearing re deft. Hamlin's application for issuance of subpoenas. Michael Kupersmith, Esq. present only.			
" "	Ordered: that subpoenas be issued as to three proposed witnesses.			
" "	In open Court, trial resumed.			
" "	Opening statements were made to the jury by Mr. Niedermeier and by Mr. Linnan.			
" "	Mr. Kupersmith reserves his opening statement at this time.			
" "	Michael G. Churchill, sworn by Clerk, was examined for Government.			
" 29	Trial resumed.			
" "	Michael G. Churchill was recalled and cross-examination and examined by counsel.			
" "	In Chambers, attorneys present, Mr. Agel moves for severance; Mr. Linnan and Mr. Kupersmith joins in motion for severance.			
" "	Ordered: motion for severance is denied.			
Nov. 1	Filed deft. Hamlin's requests to charge.			
" 1	In Court, trial resumed.			
" "	Michael G. Churchill was recalled and further cross-examined and examined by counsel.			
" "	At the bench, Mr. Linnan moves for a mistrial on behalf of deft. DuBray due to prejudicial testimony by Mr. Churchill.			
" "	Ordered: Motion for mistrial is denied.			
" "	The following witnesses, sworn by Clerk, were examined for Government: Mary Foster, Kathleen Yokubytis & Nick Ruggiero.			
" 2	Trial resumed.			
" "	Nick Ruggiero was recalled and further cross-examined and examined by counsel.			
" "	The following witnesses, sworn by Clerk, were examined for Government: Michael LeClair, Wesley Neuman, John M. Moriarty, L. G. Ferguson and Michael D. Zabowsky.			
" 3	Trial resumed.			
" "	Michael Zabowsky was recalled and further examined and cross-examined by counsel.			
" "	Jury excused -- Identification hearing held.			
" "	The following witnesses, sworn by Clerk, were examined for Government: Albert O. Axten and Kay Rainey.			
" "	Mr. Linnan moves for a mistrial on the grounds that witness Rainey was not sequestered before her testimony.			

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

(29)

DATE 1976	(Document No.)	PROCEEDINGS (continued)
Nov. 3		Ordered: Motion denied.
" "		Court will permit Mrs. Rainey to testify before the jury.
" "		Jury present -- The following witnesses, sworn by Clerk, were examined for Government: Kay Rainey, Robert Schlick, Ronald Ceppetelli, Edward Tierney, Joseph Leon, John E. Hess, Jr. and John Curran.
" 4		Trial resumed.
" "		The following witnesses, sworn by Clerk, were examined for Government: Paul G. Dingler, William H. Strickler, Paul Koch, George Contois, Jr., Fred P. List, Howard McMaster, Norman Rawding and Rita M. Veprauskas.
" "		Michael D. Zabowsky was recalled and further examined by counsel.
" "		Testimony of Virginia Reynolds was read to the jury.
" "		At 4:00 PM, Government rests.
" "		Jury excused -- Mr. Kupersmith moves for a judgment of acquittal on behalf of defendant Hamlin.
" "		Ordered: Motion denied.
133. " 5		Filed (3) subpoenas to produce document or object returned served.
" 5		Trial resumed.
" "		At 10:20 AM, defendant Hamlin rests.
" "		Out of time with leave of Court, George O. Patch, sworn by Clerk, was examined for Government.
" "		Albert J. Rousse, sworn by Clerk, was examined for Government in rebuttal.
" "		At 2:00 PM, Government rests. Defendants rests. Evidence closed.
" "		In Chambers; attorneys present, all counsel renew their motions previously made at the close of the Government's case.
" "		Ordered: Motions denied.
" "		Opening arguments were made to the jury by Mr. Niedermeier for Government, followed by Mr. Kilmartin for deft. Woodmansee.
" 6		Trial resumed.
" "		Arguments were made to the jury by Mr. Linnan, Mr. Kupersmith and Mr. Agel.
" "		Closing arguments were made to the jury by Mr. O'Neill for Government.
" "		Ordered: that Gary Nelson be appointed as Foreman of the jury.
" "		At 12:05 PM, the Court commences the charge to the jury concluding at 12:50 PM.
" "		Ordered: that the alternates be excused.

V. EXCLUDABLE D
(a) (b) (c

AO-257

Interval | Start Date | Ltr | T

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs Roy M. Hamlin

76 38 (30)
Yr. | Docket No.

DATE 1976	(Document No.)	PROCEEDINGS (continued)	V. EXCLUDABLE DEL. (a)	(b)	(c)
Nov. 6		At 1:00 PM, the jury retires to deliberate the case.			
" "		At 3:00 PM, 3:15 PM & 3:45 PM, the jury come into Court for further instructions, after receiving same, they again retire to further deliberate the case.			
" "		(At 5:00 PM, the two alternates were excused from the area--but not discharged from the case)			
" "		At 8:25p.m. and at 9:45 p.m., the jury come into Court for further instructions, after receiving same, they again retire to further deliberate the case.			
" "		At 10:30 p.m. the jury is excused for the evening and will resume deliberations at 9:00a.m. tomorrow.			
" 7		Trial resumed. At 9:00 a.m. , the jury again retire to further deliberate the case,			
" "		at 10:40 a.m. the jury come into Court and report a verdict of guilty as to Counts I, II & III.			
" "		At request of counsel - jury was polled by Clerk.			
" "		Jury excused - defendant and counsel present in Court before Judge Coffrin.			
" "		ORDERED: that a pre sentence investigation report be made.			
" "		Mr. Niedermeier requests that deft. be held by U.S. Marshal pending sentencing. Objected to by Mr. Kuppersmith. Court makes inquiries of deft.			
" "		ORDERED: Bail continued as presently set. A bail hearing will be scheduled at a later date. Deft. to present himself to the probation officer tomorrow morning.			
137 Nov.12		Filed Government's motion for revocation of bail of Roy M. Hamlin and memorandum.			
138 " 15		Filed Deft's Motion pursuant to Rules 29(c) and 33 and Memorandum in support.			
142 " 23		Filed Motion of United States in opposition to defendant Hamlin's motion for judgment of acquittal.			
143 " 26		Filed Deft's Response to Govt's Motion for Revocation of Bail and Memorandum in support of response.			
Nov. 29		In open Court before Judge Coffrin, defendant present with his attorney, Michael Kupersmith, Esq.; Jerome Niedermeier, Esq. for Government.			
" "		Hearing on defendant Hamlin's motion for judgment of acquittal, or in the alternative, for new trial.			
" "		Ordered: Motion denied.			
" "		Hearing on Government's motion for revocation of bail as to defendant Hamlin.			
" "		Statements made by Mr. Niedermeier and by Mr. Kupersmith.			
" "		Ordered: bail is revoked and defendant is remanded			

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DATE 1976	(Document No.)	PROCEEDINGS (continued)
Nov. 29		to custody of U. S. Marshal.
Dec. 6	146	Filed deft. Hamlin's motion for rehearing.
" 6		In open Court before Judge Coffrin, defendant Hamlin present with his attorney, Michael S. Kupersmith, Esq., for sentence. Jerome O'Neill, Esq. and Jerome Neidermeier, Esq. for Government.
" "		Mr. Kupersmith on behalf of deft. Hamlin moves for continuance of sentence.
" "		Ordered: Motion granted.
" 13	155.	Filed letter dated Dec. 9, 1976, re Roy Hamlin.
Dec. 13		In open Court before Judge Coffrin, defendant Hamlin present with his attorney, Michael Kupersmith, Esq., for sentence. Jerome O'Neill, Esq. for Government.
" "	156.	Filed Judgment and Probation/Commitment Order as to deft. Hamlin -- defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eight years as to counts 1 and 2. Defendant committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four years as to count 3. Sentences to run concurrently with each other.
" "		Court advises defendant of his right to appeal.
" 13	157.	Filed Financial Affidavit of Mr. Hamlin.
" 13	158.	" Appointment of Michael S.Kupersmith, Esq. as counsel(in appeals court).
" 13		Hearing on defendant Hamlin's motion with respect to bail.
" "		Ordered: bail continues to be revoked.
" "	164	Filed deft's Notice of Appeal. Mailed copy to Michael S. Kupersmith, Esq., U. S. Atty., Judge Coffrin, Court Reporters and Clerk, U. S. Court of Appeals.
Dec. 23	169.	Filed Order -- the previous denial of the respective motions of defendants Woodmansee and Hamlin requesting bail pending appeal are hereby reaffirmed. Copy mailed to attorneys.
1977		
Jan 24		Filed Scheduling Order - Record to be filed on or before 3-17-77; transcript to be filed on or before 2-15-77. (See 76-38-1)
" 27	172	" Authorization to incur expense of transcript.
" 28	173	" Authorization to incur expense of investigator.
Feb. 8		" Scheduling Order - amended - transcript to be filed with Dist. Court Clerk 3-17-77; record filed with Circuit Ct. 3-18-77; brief & appendix of appellant be filed 4-18-77. (See Woodmansee)

V. EXCLUDABLE D
(a) (b)

AO-257

Interval (see Section II) Start Date End Date Ltr. C

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

Hamlin

(32)

76 | 38
Yr. | Docket No.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELA (a)	(b)	(c)
1977				
Mar. 10	Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.			
Apr. 8	" supplemental record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N. Y. Attys. notified.			

Interval | Start Date | Ltr.

REPORT

SURVEY CONDUCTED FOR SAUL LEE AGEL

PROCEDURE

A systematic random sample of 320 residential phone numbers from the Burlington area and St. Albans area telephone directories was drawn originally. An additional 109 phone numbers were later added to the sample (a check made of both response rate and knowledge level of the two samples revealed no statistically significant differences, so both samples may be considered as one).

All numbers in the combined sample of 429 were called between July 6 and July 9, 1976. Numbers which could not be reached in the evening (7-9:30 p.m.) were also called on the afternoons of July 8 and July 9. Of the 429 numbers, 5 were business phones and 20 were disconnected, leaving 404 valid phone numbers. The distribution of there were as follows:

	No.	Per cent
Interviews	246	61
Refusals	81	20
No answer	69	17
Other	8	2

A response rate of 61% is significantly higher than the norm of 50-55% in most telephone surveys.

Of the 246 completed telephone contacts, 59 were in residences that contained no registered voters, leaving 187 usable responses, 76% of those contacted.

21% of the sample telephone numbers were drawn from the St. Albans directory, while 24% of the completed and usable responses came from the St. Albans area. Franklin County residents, therefore, are slightly overrepresented in the final group. There is no indication that this significantly affects the final results, except in the case of Woodmansee, discussed below.

RESULTS

Respondents were asked to identify six individuals and, if the individual were correctly identified, to rate him or her on a "thermometer scale" ranging from 0 to 100. A score between 0 and 49 indicates

negative or "cold" feelings towards the individuals; a score between 51 and 100 indicates various degrees of positive or "warm" feelings. Respondents were told that 50 was a neutral or "no feeling" response. The percentage of respondents correctly identifying the individuals follows:

Name	Per cent Correct
Thomas Salmon	96
Jack O'Brien	49
M. Jerome Diamond	65
Bernard Woodmansee	31
Lattie Coor	22

Only one respondent correctly identified Virginia Reynolds, and did not give her a rating.

An average of 87% of those who correctly identified an individual would rate them on the thermometer scale. Other either refused to, claimed they didn't know enough about the individuals to rate them, or, in the case of Woodmansee, indicated that he could not be placed on the same scale as the others.

The mean rating for the individuals, along with standard deviations, are presented below in two forms. One includes all those rating an individual, and the second includes only those who gave either positive or negative ratings (those who rated an individual at 50, or "no feeling" are excluded).

	ALL RATING		NON-NEUTRAL RATING	
	Mean	S.D.	Mean	S.D.
Salmon	56.99 (N=166)	24.89	62.21 (N=113)	27.48
O'Brien	52.73 (N=77)	20.15	56.56 (N=32)	31.13
Diamond	63.85 (N=107)	22.29	69.50 (N=76)	24.31
Woodmansee	16.71 (N=41)	23.01	5.97 (N=31)	14.71
Coor	57.41 (N=29)	18.97	66.54 (N=13)	26.01

EVALUATIONS OF WOODMANSEE

As indicated in the above tables, Bernard Woodmansee was correctly identified by nearly one-third of the sample. It appears that the slight overrepresentation of Franklin County in the total

ay have decreased his recognition level somewhat. Only 22% of respondents from Franklin County could identify Woodmansee, while 33% of those respondents whose numbers were selected from the Burlington area directory did so. Respondents from Burlington, Winooski, Essex and South Burlington were most likely to identify Woodmansee correctly (38%). There is also a small sex difference in recognition. 37% of male respondents recognized Woodmansee, and 31% of female respondents did so. One should be aware of the fact that telephone surveys normally overrepresent the female population, and this survey is no exception. The male-female division was nearer 60-40 rather than 50-50.

(The ratings of Woodmansee were overwhelmingly negative.) Sixteen respondents refused to rate him at all, almost without exception noting the difficulty of placing a criminal on the same scale as politicians. These respondents did indicate to the interviewers that they did have negative feelings. Only one respondent scored Woodmansee above 50, giving him a rating of 60. Of the remaining 40 respondents, 10 (25%) gave him a 50 (no feelings) and the rest scored him below 50. A total of 26 (63%) of those rating Woodmansee actually gave him the lowest possible score of zero (several even attempted to give him scores below zero).

One interesting, and statistically significant, finding involves sex differences in rating Woodmansee. Women, although clearly negative in their feelings toward Woodmansee, were distinctly less negative than men. The only positive rating (60) was given by a woman, and women were less likely to give Woodmansee zero, the lowest possible score. 71% of of males who rated Woodmansee gave him a zero; only 55% of female respondents did so. Women were also more likely to be neutral towards Woodmansee. 35% scored him at 50, while only 18% of male respondents did so. One of those "neutral" individuals was a woman who claimed she had been on jury duty at the time of an earlier Woodmansee trial.

A cautionary note--one should be wary of making too much of this sex difference; although it is statistically significant, the actual percentages are based on relatively small N's.

SAMPLING ERROR

On the basis of the sample size, I have estimated the sampling error at approximately 6%. This means that there is a 95% probability of the survey results being within 6% of the actual population figures. The actual sampling error will vary from question to question.

subject and perhaps heard his evidence. I think he would like to present evidence in relation to his motion for prejudicial joinder.

MR. SCHUSER. I will join in that request, too, your Honor, on behalf of my client.

THE COURT. You all filed a motion. Will this make any practical difficulties as far as your two clients are concerned, Mr. Agel, if you argue your motion at this time?

MR. AGEL. I don't believe so. We would just as soon argue it at this time.

THE COURT. Then argue your motion.

MR. AGEL. We would like to present evidence, if we could, with a witness.

KATHLEEN FRANKOVIC, Sworn

DIRECT EXAMINATION

DEPUTY CLERK CURRAN. Defendants' Exhibit "A" for identification is a report on a survey.

MR. AGEL. If it please the Court. Before I begin, I would like to give you a copy of what we have marked, so you can follow along, if you would like.

THE COURT. It is not in evidence yet, is it, Mr. Agel?

MR. AGEL. No, but I thought you would like to have the benefit of that. If you don't, you don't have

to look at it, your Honor.

Q (By Mr. Agel) For the record, would you state your name?

A. Kathleen Ann Frankovic.

Q Where do you live, Miss Frankovic?

A. In Essex Junction.

Q What is your occupation?

A. I am an Assistant Professor of Political Science at the University of Vermont.

Q Would you describe for us what your educational background is, please?

A. I have a B.A. in Government from Cornell University and M.A. and PhD in Political Science from Rutgers University.

Q How long have you been at the University of Vermont?

A. This completes my second year.

Q Prior to coming to U.V.M., what did you do?

A. Assistant Professor at Case Western University in Cleveland. At the time I was there, I conducted two surveys of the City of Cleveland to determine such things as political attitudes, racial attitudes and so on.

Q What background and experience have you had in that particular field of conducting surveys?

A. First of all, in the summer of 1971 I attended a course in political research at the University of Michigan. This was extensive and intensive training in statis-

tical methods, including sampling. While a graduate at Rutgers, I became familiar with the conduct of the New Jersey poll, and while in the City of Cleveland, as I mentioned, I conducted two surveys of my own.

Q What type of work did you do in connection with receiving your Masters and Ph.D?

A. I am sorry. My graduate thesis, my Ph.D dissertation was an extensive secondary analysis of national opinion surveys, election surveys done at the University of Michigan. So, in other words, I am familiar with secondary analysis, statistical analysis of sample surveys.

Q You feel as if you are a qualified young lady to conduct a survey?

A. Yes, I do.

Q At my request, did you conduct a survey?

A. Yes, I did.

Q When did you and I first have contact, do you recall?

A. It was some time towards the end of June; probably the second or third week of June.

Q And, did I contact you directly?

A. Yes, you did.

Q And, did we then have occasion to visit?

A. Yes, we did.

Q Tell us what the visit consisted of, please.

A. I was asked whether it would be possible to conduct a

survey in the Burlington area to determine such things as the percentage of individuals familiar with certain names, including the name of one of the defendants. I discussed with Mr. Agel the methodology by which this could be carried out, the likelihood of receiving valid responses, and the expenses that would be involved in doing so.

Q And, did I indicate to you who it was that I wanted you to conduct a survey about?

A. Yes, you did.

Q Did we discuss various methods in order to accomplish what you considered a reasonable result?

A. Yes, we did.

Q Did I retain you to conduct such a survey?

A. Yes, you did.

Q Have you conducted such a survey?

A. Yes, I have.

Q Did you prepare a report for me in connection with your work, based on the result of that survey?

A. Yes.

Q I show you what has been marked as Defendants' "A" and ask you whether or not you would look at this document and identify it for us, if you would? (Handed to the witness)

A. Yes. This is the report that I submitted to Mr. Agel

on the sample survey.

Q Would you tell us when it was that you submitted this?

A. This morning at eleven o'clock.

Q In my office?

A. That is right.

Q Prior to that time, had I had any knowledge of the result of the survey that you made?

A. No.

Q Kathleen--do you mind if I call you that?

A. Go ahead.

Q Kathleen, would you tell us what you did in connection with this Defendants' "A" please?

A. Okay. Let me briefly review the procedure that was followed. A sample was drawn from the Burlington area and the St. Albans area from books consisting of 425 phone numbers. These numbers were then called. I should add, it is a systematic random sample, or a systematic sample with a random start of phone numbers at equal interviews, as selected, beginning with a random number somewhere between one and the gap, between the selected phone numbers. At any rate, these phone numbers were called by student individuals, who are students at U.V.M. whom I hired to do so. Individuals were contacted between July 6th and July 9th--in other words, last week--and from those 425 phone numbers, we had 246 completed interviews. That is

a response rate of 61 per cent; that is quite high for most telephone surveys. Of those 246 completed interviews, 187 involved registered voters, and it is to those 187 individuals that the entire questionnaire was administered. I think that briefly explains the procedure. Would you like me to go on to the result?

Q Please.

A. The questionnaire asked responses whether they could identify a set of six names. The names were Thomas Salmon, Jack O'Brien, Jerome Diamond, Bernard Woodmansee, Lattie Coor and Virginia Reynolds. If an individual successfully identified a person, if the person successfully identified the individual they were asked, they were then requested to give what is known as a thermonatory score to the individual. This was explained to them in detail over the telephone. It is a device that has been used very frequently in political survey work in national and in local studies. They are asked to rate the individual from zero to one hundred. Zero indicated cold, negative feelings; one hundred, or numbers close to it indicated positive warm feelings, and fifty being a neutral or no feeling response. The results of the survey in terms of percentage identification ranged from 96 per cent of those interviewed who could identify Thomas Salmon as Governor; a low of 22 identified Lattie Coor as

President of U.V.M.; Bernard Woodmansee was correctly identified by 31 per cent of those I had interviewed; Virginia Reynolds was not identified by but one respondent. Those correctly identified individuals were asked to rate them. In other words, the average rating from zero to one hundred ranged again from 63.8 per cent for Jerome Diamond to a low of 16.7 for Bernard Woodmansee. The responses in the evaluation of Woodmansee were almost uniformly negative. One woman scored him at sixty; ten individuals scored him at fifty, or neutral, no feelings; the rest gave scores much closer to zero. 63 per cent of those who rated Woodmansee actually gave him zero, or the lowest possible rating. I should add, a couple of people attempted to give him negative scores. A number of the respondents refused to give him a rating for several reasons. One of those reasons commonly cited was that they did not feel he belonged to the same kind of scale; could not be rated along with politicians and other community leaders. Would you like me to go into more detail?

Q Go ahead. Continue, if you would like.

A. There were some differences, and I am going to focus on the ratings of Woodmansee. Now there were some differences in recognition level, based on sex and based on residence. We did not ask a team of graph figures.

Things like income, occupation, religion are often difficult questions to administer successfully. They involve personal information and respondents are often loathe to give this kind of information over the phone, but at any rate, we discovered that recognition of Woodmansee varied with distance from Burlington. Individuals who resided in Burlington, Essex, Winooski, South Burlington--the four closest towns--were most likely to identify Woodmansee correctly. Individuals who came from the St. Albans area were the least likely to recognize Woodmansee. There seems also to be a split sex difference in recognition with men being somewhat more likely to recognize Woodmansee, than women. There is a sex difference in terms of rating. Men and women were uniformly negative. My interviewers informed me there were almost violent reactions by respondents when Woodmansee's name was mentioned. Women were somewhat more positive towards Woodmansee . That does not mean positive; that means only somewhat less negative in evaluating Woodmansee. As I said before, 63 per cent of the respondents did rate him at the lowest possible scale. Only ten of those low-rated him. 25 per cent of the total rated actually gave him a fifty, or neutral score. I will add something about sample error here. The sample size, again at four hundred, were completed responses, were completed interviews, dropped to

256 and were usable interviews; interviewed, were registered voters. It dropped to 187. The sample error for this size survey is approximately six per cent. This varies from question to question. It depends on the percentage score for each question. For example, the fact that 96 per cent of the respondents in my survey recognized Thomas Salmon, means probably between 95 and 97 per cent of individuals in the area could identify Thomas Salmon correctly. The sample error at that level of identification would be 1 per cent; perhaps even less than one per cent. At the level of Woodmansee's identification, it would be approximately six per cent.

Q Kathleen, I would like you to refer to Page 2 of the report, which is an important identification under non-neutral ratings, you have a---you had an S.D. score.

A. That is standard deviation.

Q Would you explain the difference and what it means, please?

A. In that second column, the second level, I have eliminated for the calculations those individuals and those scores of fifty. In other words, those neutral scores or no feeling scores. It means those people who gave positive or negative evaluations. The S.D. simply means standard deviation. A standard deviation is a measure of disbursal. The closer it is to zero the less disbursed the responses are, so that the fact that the

standard deviation of 14.7 for Bernard Woodmansee at that point indicates the vast majority of responses fall from close to five; the standard 31.4 for Jack O'Brien indicates the majority of the responses, two-thirds of the responses are ranged at quite a distance from the mean that is given.

Q Can we interpret from that statistic what you have, I believe, expressed as ill feeling toward Bernard Woodmansee by those people that recognized him, that the feeling was very negative?

A. Oh, yes.

Q Certainly in comparison to Thomas Salmon, Jack O'Brien, Jerome Diamond and Lattie Coor?

A. Yes, that is correct.

Q You don't have statistics listed here for Virginia Reynolds. Is that because only one person recognized her?

A. One person recognized her, did not give her a rating. There is nothing to compute.

Q Do you believe that the work done in connection with this survey is a reasonable analysis of the feeling toward Bernard Woodmansee in this area?

A. Yes, I do. I think this is a valid survey from this area; it was conducted using all the rules of sampling and of survey taking that I know of, and I would like to add this--if I were interested and I find this sporadi-

cally interesting, the difference between the recognition of the various names, I would certainly have no qualms to publish, as a political scientist, the result of this with the information that is included in the report.

Q Prior to my commissioning you, so-called, to do this survey, did we discuss the fact it was your feeling we wouldn't get a very reasonable reply?

A. That is true.

Q Were you surprised sith the result?

A. I am quite a bit surprised. I had suggested to you that I really didn't expect there would be any recognition level to speak of, and it certainly is more than that.

MR. AGEL. If it please the Court. In connection with this young lady's testimony, we would like to have this as part of the record in the case--Defendants' "A".

MR. O'NEILL. Your Honor, this is the first time I have seen this and it will take me time to go over it in order to ask intelligent questions, naturally.

THE COURT. Take your time.

MR. AGEL. We would like the record to show in response to the question I asked the lady, this was made available late this morning, that I would assume is a lot later than a lot of information handed to us by

the Government about nine minutes after 1:00 in connection with this case.

MR. O'NEILL. I am not complaining when this was delivered to Mr. Agel; I am simply indicating I haven't had an opportunity to read it.

THE COURT. Before Mr. Agel asked you to conduct this survey, had you ever heard of Bernard Woodmansee?

MISS. FRANKOVIC. No, I had not.

THE COURT. How long have you been in the Burlington area?

MISS FRANKOVIC. I just finished my second year.

MR. AGEL. I am not sure the purpose of that question.

THE COURT. I think the Court can take judicial notice to a limited extent that Mr. Woodmansee has achieved some level of notoriety in this vicinity.

MR. AGEL. I would like the record to show it is my best belief Bernard hasn't been before a court in a period long before the time the young lady has been here, so that is probably why she is not familiar with the name.

THE COURT. The Court is familiar with his name.

MR. AGEL. I am sure the Court has been here longer than she has.

THE COURT. How many of the people you telephones have been in this vicinity longer than two years?

MISS FRANKOVIC. That was not asked. Your Honor?

THE COURT. Yes.

MISS FRANKOVIC. I would like to add some explanation of the use of telephone directories to determine samples to select samples because that, in a way, indirectly may answer your question. The telephone directory itself is out-of-date as soon as it is printed, as we discovered, when twenty of our original samples were disconnected phone numbers. The telephone directory also does not include transients or new residents in the community. I would not hazard a guess at the length of time that the individuals we interviewed have been in the area. I would suggest that the individuals contacted had been here at best some months; probablyna majority of them had been here longer than I had.

THE COURT. There wasn't an effort made to determine the age of the person who answered the telephone, with the exception that you did ask whether or not they were registered voters?

MISS FRANKOVIC. No. As I mentioned before, we asked no demigraphic questions. Normally, the success of a telephone survey varies greatly with the length of the questionaire.

MR. O'NEILL. May I question with respect to "A," your Honor?

THE COURT. Yes, you may.

Q (By Mr. O'Neill) I will start off first, is it Miss, Mrs., Doctor, or what is your preference Ms. Frankovic?

A. Yes.

Q Ms.?

A. Ms.

Q I will try to remember it that way. Ms. Frankovic, your basic holding prior to the time you have been in this area is that of political polls?

A. That is right.

Q With the exception of politicians named herein, this is not a political poll?

A. It is not a political poll in the sense it is done for a candidate. I would certainly see no difference between this kind of survey and the kind conducted in Cleveland in what we were doing there.

Q You would agree Bernard Woodmansee and Virginia Reynolds are not politicians?

A. Absolutely.

Q Now I think you indicated there are a number of variables in any score, any percentage of determinations as to the accuracy. Isn't that a fair description? In other words, any poll that you have had is not going to be one hundred per cent accurate, no matter what you do?

A. That is right.

Q There will always be variables dependent upon the success of the contact and the nature of the paople asked the questions, the sex of the person, race of the person, nature of the question, type of questions you asked, time of day you call, and numerable factors?

A. That is correct.

Q In fact, in this particular instance you came up with, I think, a sample with respect to Mr. Woodmansee of six per cent?

A. I might explain what a sampling area is, as a statistical measure, does not take into account interviewer action with respondents or the bias of the original sampler.

Q The six per cent figure you arrived at, it is a figure based on what statistics of any nature or likelihood to determine the variable rate based on the framing of the question?

A. It has nothing to do with human error.

Q All it is, you know how large your sample is, and from this you can come up with the mean deviation?

A. You know the size of the sample, the result on each question, and from those two you could find out and determine the sampling area.

Q The sampling area is something arrived at statistically from which you take from the table?

A. That is correct.

Q Do you have the exact questions asked of people on the telephone?

A. I do. I have a copy of the questionaire with me.

Q May I see a copy of it please?

A. That is interview instructions, for the interviewer.

Q The person asking the questions asked them on the basis of the person asking the sample questionaire?

A. That is right.

Q Your results of the interview are based upon those taking the interview for you, is that correct?

A. That is correct.

Q The question you have with respect to a person's warm or cold feelings---

MR. SCHUSTER. Could I have that marked, what Mr. O'Neill is referring to?

MR. O'NEILL. I will probably mark it myself, if I can finish, your Honor.

THE COURT. We know what it is; in time we'll mark it. Go ahead.

Q (By Mr. O'Neill) One of the questions which I think you testified to earlier was as to the individual's warm or cold feelings about an individual thermometer. Was any further things given than the warm or cold reaction? The only things the person got was contained on this form?

A. This questionaire was pretested by one interviewer who has had a good deal of interviewing experience. She came back with the result that people understood the thermometer ranging and able to rate individuals. Interviewers were instructed that if a person found it difficult to rate, they were to repeat the instructions. They were, in no way, to lead the respondent into giving any kind, any particular kind of answer. I would like to add for the benefit of the people I hired as interviewers, in several cases there had been interviewing experience; all of these individuals had been, had worked at one time or another in the political data laboratory and had a good deal of background knowledge as undergraduates as political scientists in the background knowledge in the conduct of surveys. These were not people who were grabbed in off the street.

Q Essentially, other than a person not following your instructions, the questions as asked over the phone were as on the questionaire?

A. Yes.

Q I think you indicated you limited your questions of the sampling to those in the Burlington and St. Albans phone books?

A. That is correct.

Q The phone books are outdated immediately as of the date

they are printed?

A. That is correct. However, this survey was conducted almost immediately after the printing of the telephone directories which would probably make it more valid than any other surveys done with the directories in the area.

Q But, the phone books are outdated?

A. That is correct.

Q It does not take into account the people who do not have phones?

A. That is correct. May I elaborate?

Q It doesn't take into account people without phones?

A. That is correct.

Q It doesn't take into account those who have an unlisted number?

A. That is correct.

Q Or people who did not have their names in the directory?

A. These are unlisted numbers.

Q As opposed to the people from whom you got your information. You indicated also that the surveyors asked whether the individual was a registered voter, is that correct?

A. Yes

Q And, they used the information coming from the person on the other end of the line in arriving at their statistics, obviously. Was any attempt made--withdrawn. When you say the Burlington area directory, did this take into account

persons who lived in the Middlebury area?

A. Yes, it did.

Q Do you know the geographic perimeters of the Burlington phone book?

A. It goes down to about half of Addison County.

Q Obviously, the northern half of Addison County?

A. Yes.

Q I think according to the report you have, I think twenty per cent of the persons here indicated, twenty per cent of the people you spoke to refused to give you an indication as to their feelings?

A. That is right.

Q That terminated the survey right there?

A. That is right.

DEPUTY CLERK CURRAN. Government's Exhibit "1" for identification is a copy of sample questionnaire.

MR. O'NEILL. Your Honor, we have the understanding this type of document is usable by the Court. We have no objection to its admission and also move the admission of Government's Exhibit "1", the sample questionnaire at this time. I have a number of arguments with respect to various aspects of it and can defer the questions to the witness, but there is no point in taking the time of the Court. So, with that thought, I have no objection at this point in time.

MR. SCHUSTER. No objection, your Honor.

MR. KUPERSMITH. No objection.

THE COURT. All right, Defendant Reynold's "A" is admitted and Government's "1" is admitted.

(Defendant Reynold's Exhibit "A" and Government's Exhibit "1" were received in evidence.)

THE COURT. Do you oppose the motion to sever?

MR. O'NEILL. Absolutely, your Honor.

MR. SCHUSTER. May I ask a couple of questions of the witness?

THE COURT. You may.

CROSS EXAMINATION

Q (By Mr. Schuster) If you were going to do a survey like this, or a sample, and you weren't restricted by time factors or experience factors, what would be the absolute best way to do something like that?

A. In other words, the absolute best way to draw a sample and conduct an interview?

Q Right.

A. Am I restricted to using the telephone? The absolute best way of conducting an interview is obtaining a master list of residents in the State of Vermont and uniformly sampling from this and conducting person-to-person interviews in their homes. That requires so much expense, so much time that it really is almost a useless research tool.

Q On the basis of your experience, would you say that type of research tool was any more accurate than the research tool you used in this instance, and if so, in what percentage?

A. I would argue it might be somewhat more accurate for a few reasons. The interviewer gets the foot in the door and occasionally can get an interview out of a person who is originally hostile. Secondly, it would be somewhat more accurate because it would include in the sample individuals who don't have telephones and individuals who have unlisted phone numbers.

Q What is the margin of error between the type you did and that type?

A. I would say the purpose of learning this kind of information, discovering this kind of information, the increase in efficiency does not override the increase in cost.

MR. SCHUSTER. Thank you.

THE COURT. Any further evidence or questions of Ms. Frankovic? You may step down.

(The witness left the stand.)

MR. AGEL. I believe where we are now, may I further discuss the pending motion?

THE COURT. Yes, if you wish to argue it.

MR. AGEL. I would like to point out, your

Honor, that since Defendant's "A" is part of the record, we would like to feel that the survey is a useful tool for the Court to help make the determination to grant the defendant, Virginia Reynold's motion for a separate trial. It is interesting to note among other things in the report, that Ms. Frankovic presented, 63 per cent of those people that rated Bernard Woodmansee actually gave him not a low score but the lowest possible score of zero, and there were several attempts to give him scores well below zero. The Court itself is aware of Bernard Woodmansee's reputation. I can't, at this time, give you, your Honor, the criminal record of Bernard Woodmansee because even though it was asked by the Government, it is one of those items they said "We'll give it to you when available". Obviously, it has been available all along, but like everything else, it is not available so we could have the advantage of giving it to the Court at this time.

It has always been the position of Virginia Reynolds, your Honor, that Roy Hamlin has an extensive criminal record. That is generally known in this area. Not as well as Bernard Woodmansee, I would say, but Roy Hamlin has been a guest of the Government on a number of occasions, and we think that in order to see that Virginia Rey nolds has a right to a fair and impartial trial, she be severed from all the other defendants in the case.

In addition, your Honor, I would like to point

out in Paragraph II of our motion, we indicate that Bernard Woodmansee has received extensive media coverage, and that sort of speaks for itself. We could go and do a survey of the newspaper articles and records, but really don't have the funds in order to do that, your Honor,but I think you, yourself, know that Bernard has been extensively covered not only while he has been arraigned before courts in the state, but also his activities as a prisoner while he has been a guest of the State of Vermont. He also has been very active in the Supreme Court of the State of Vermont as a litigant and has made some extensive law in the State of Vermont.

Virginia Reynolds, I think the record will show, has never been before a court ever in her life. It is important she receive a fair and impartial trial, and I am sure the Court agrees, and I am sure the Government would not disagree, but on the basis of that important factor, the survey that Ms. Frankovic conducted, and the result of that, your Honor, we would like to certainly urge the Court to grant the defendant's motion for a separate trial.

THE COURT. Why isn't this a matter that can be handled, Mr. Agel, at the time of the jury selection through the customary voir dire?

MR. AGEL. That, of course, is the reply made to us by the Government in its papers. Your Honor, I just think the survey probably is the answer to that. If we were

just dealing with some other defendant, some other individual who may have some experience with the law, I would say that your suggestion would be an appropriate one, but in this case, because of the reputation that Bernard has, I think it is impossible for this young lady to be afforded that which she is entitled to. I don't know what else to say on that, your Honor.

MR. SCHUSTER. Since we are all joining in the motion, I think I would like to get my lick in at this point. I subscribe totally to what Mr. Agel says, and I endorse the testimony as given by Ms. Frankovic in the survey.

I have some additional matters I would like to present to the Court in its consideration of this motion. As the Court knows, the law gives the Court a great deal of discretion in deciding whether severance should occur or not, and this situation is no different. Mr. DuBray is essentially in the same position as Mrs. Reynolds. On the public record, Mr. DuBray has not been before a court before. He has a clean record. So his situation, in fact, may be altered radically by being forced to go to trial with Mr. Hamlin and Mr. Woodmansee.

Mr. Hamlin, who I have represented previously in the state courts, has a record longer than Mr. Woodmansee, if the Court wishes to know, even though I haven't seen it recently, but there is something more probably involved in

this thing with regard to severance. It has nothing to do with Mr. Woodmansee's notoriety. It has to do with the case itself. It is an important reason why the Court should consider severing the case. The case by the Government is based solely on the testimony of a Government informant, to my knowledge. Other than corroborating evidence, the substance of the Government's case will be the testimony of one Michael Churchill. To my knowledge, Michael Churchill has a criminal record. In addition, although I have not obtained that information, it has been told to me by a number of people, whose words I don't know if I can trust or not, but to my knowledge, Mr. Churchill has been arrested a number of times before and, in fact, has been convicted.

Under the circumstances, the testimony is going to involve solely conversations between Mr. Churchill--maybe Mr. Churchill and Mr. Woodmansee; maybe Mr. Churchill and Mr. Hamlin; maybe Mr. Churchill and Mr. DuBray, and maybe Mr. Churchill and Mrs. Reynolds. The substance of these conversations, I haven't discovered either. Inasmuch as the testimony is going to be based solely on Churchill and what some one said at some particular place to implicate them in the conspiracy as charged in the indictment, it would appear to me, at the very least, the Court would have to examine in camera, if it wishes, the testimonial statements that Churchill is going to state on the stand that were said by other people,

and how those statements affect Mr. DuBray and his rights in the courtroom vis-a-vis severance. These statements have nothing to do with knowledge, but deal with the Woodmansee conspiracy in which he supposedly had one single overt situation, or in one place and one particular time. Those series of statements that Churchill will testify that Woodmansee or Reynolds said, or Hamlin said, or how they affect DuBray affects whether he gets a fair trial jointly. Certainly those statements would not be admissible on a separate trial of Jacky DuBray against him if they did not affect him.

THE COURT. I am inclined to agree with the last statement, but I don't understand why you think you need severance merely because the cases apparently will be established on the testimony of an informant, or largely established on the testimony of an informant.

MR. SCHUSTER. I think it will be established largely on the testimony of an informant, and largely on what he said other people said, within the presence of my client or outside the presence of my client. I suppose Mr. O'Neill fully intends to introduce a number of statements made by Bernard Woodmansee which were never made in the presence of my client.

THE COURT. That may well be true.

MR. SCHUSTER. And, the Court will instruct the jury they are not to be used against defendants Hamlin

and DuBray?

THE COURT. Not necessarily if they come in as part of the conspiracy.

MR. SCHUSTER. The conspiracy will probably have to be proved mostly through the testimony of Mr. Churchill, what he heard and saw the people do. So, it is all tied together, is what I am saying and I think the Court has to examine that testimony of Churchill and what other people said before you can decide the severance question.

THE COURT. Mr. Kupersmith, anything you wish to say before we turn the argument over to Mr. O'Neill?

MR. KUPERSMITH. Yes, your Honor. Although it came to my attention Mr. Hamlin has been convicted of various crimes in the State of Vermont, I don't believe he has anywhere near the notoriety that Mr. Woodmansee has attained, and I think the arguments presented by Mr. Agel and Mr. Schuster regarding their clients apply to him as well. It is very difficult for him to get a fair trial being tried with Mr. Woodmansee.

MR. SCHUSTER. My senior law partner said Mr. Hamlin once achieved the same standing in society as Mr. Woodmansee now holds.

THE COURT. Some times lawyers and people closely connected with law enforcement work think there is more notoriety attached to their clients perhaps than the

general public generally sees, or recognizes, or notes; Mr. O'Neill.

MR. O'NEILL. Your Honor, our thoughts with respect to the whole matter, first of all with respect to the political survey, other than the fact it is easier while the witness is on the stand and cross examined, rather than argue and state it here afterwards, and the same thing is said with respect to the poll, we object to the whole matter. The Court can use it for what it is worth. It doesn't concern us directly. The whole thing is that in this interview people in the State of Vermont heard of Bernard Woodmansee. So what? That is not a basis of severance for the other individuals. To try Mr. Woodmansee without the other individuals certainly, we believe, is much more likely to create publicity difficulties for another panel of jurors, which makes it more difficult to try this particular case.

I note specifically the form I have, a number of problems with the survey itself relating to such things as warm-cold, which isn't very well defined as to what its meaning is. In fact, there is a substantial part of the political survey, we agree, no question about it. Mr. Woodmansee is well-known in the State of Vermont. There is no disagreement there at all. The question really is, can he achieve a fair trial, which is not the issue being raised here, but can the co-defendants. There is no question in the

form if the person was associated with Mr. Woodmansee, would you tend to be fair to that person or anything related to that. We have more faith in the jury system and the ability of individual jurors to make a determination of guilt or innocence than, apparently, the defendants do.

We also strongly believe this Court can simply voir dire thirty per cent of the people heard of Mr. Woodmansee and that same thirty per cent feel they could not be fair to him, fine, eliminate thirty per cent of the jurors. I am sure the Court can call in more jurors to ensure a fair trial of all of those individuals here. This is not an unusual problem and certainly not here in the State of Vermont as compared to other areas, as it makes no difference. What it basically comes down to with respect to the evidence, and I will not get into evidence, Mr. Schuster did state what our evidence will or will not be. We can apply post arrest. The Court can rule upon the evidence as it comes in. We object to the Court viewing the statements only to the point of view we don't think it is necessary. We have no objection to the Court looking at them. We just believe it is unnecessary.

On that basis, your Honor, we believe the information set out isn't really material and the only way to determine whether the individuals can receive a fair trial is on the voir dire impaneling of the jury. If the Court determines they can't, fine; we'll take appropriate steps, but

we believe it can.

THE COURT. Won't we have the same problem even if we sever the trials? Mr. Woodmansee, apparently, is going to figure prominently in whatever trials are conducted. His name will be mentioned, his activities will be mentioned, and the only difference is perhaps your respective clients, or the other defendants will not be present at that particular time, but how have we solved anything by severing here as far as the publicity of Mr. Woodmansee's reputation is concerned?

MR. AGEL. If I remember what the indictment said and what other information we secured from the Government, they seem to, and I would agree with Mr. Schuster in this regard, they seem to relate specifically to this man by the name of Churchill and any conversations he had, or believes he may have had with Bernard Woodmansee. It is very important to note Mr. O'Neill said nothing about a fair trial for this young lady. He was talking about a fair trial for Bernard. That is not the basis for my motion.

THE COURT. The Court understands that, Mr. Agel. The Court has difficulty seeing even if your client is severed from the trial of Mr. Woodmansee that it is going to be any different. Certainly the name of Woodmansee will be equally known to whatever jury may try your client as might try the original four defendants.

MR. AGEL. However, if a separate jury tried Virginia Reynolds, it would be my feeling that the conversations that were--if they were held between Churchill and Woodmansee outside the presence of this young lady, would not be admissible in her trial. So, if we are concerned with her having a fair trial, which we are--we all are--those types of things are excluded in her trial, it would be my feeling, if tried separately, the Government would have absolutely, absolutely no case against her.

I am not here to argue for Mr. Hamlin and Mr. DuBray, but we are talking now to see that Virginia Reynolds is severed. If the Court looked at the indictment, there is absolutely nothing. Some of the response documents filed by the Government in response to motions that have been filed by all of us, you will see there is absolutely no mention of Virginia Reynolds; nothing.

I have also had, of course, the benefit of her grand jury testimony. There is nothing in there, your Honor, in my judgment, that puts her in the deserving position of being a defendant in this court.

THE COURT. What about Count III, the conspiracy count?

MR. AGEL. That, of course, is the Government's catchall. If she is tried with Bernard or anyone else in this case, all of that testimony is going to come in and her

chances of getting a fair trial on that basis become slimmer and slimmer inspite of your very good offices in instructing jurors they are to consider certain testimony in regard to Hamlin and certain testimony in regard to DuBray and ignoring it as far as her. They will hear it as far as her and put it all together, and that is the Government's catchall, and that is why that is a stronger reason, if any, why she should be severed.

MR. SCHUSTER. That was the point of my argument, your Honor. Certainly the publicity factor might not be involved, as the Court logically assumes, by having separate trials in this jurisdiction. The best way to solve the problem is to change the venue to another jurisdiction outside the state where Mr. Woodmansee is not that well known, but the main thrust of my motion for relief from prejudicial joinder was the fact that it is my opinion, based on my experience as a prosecutor, and what I see from the affidavit I have got ahold of, that a great deal of this conspiracy Count III alone will be proved by statements made by Bernard Woodmansee to Michael Churchill, or a statement made by Bernard Woodmansee over the telephone to Roy Hamlin, and on that basis Jacky DuBray stands deprived of getting a fair trial despite the offices of the Court in instructing the jury, as Mr. Agel well put to you.

MR. O'NEILL. The theories expressed by Mr.

Agel and Mr. Schuster are somewhat contrary; that if you have a weak defendant along with strong, you find that defendant acquitted. If figured in among them, as the case goes along, the Court determines the evidence is sufficient or such that a defendant cannot receive a fair trial, we are sure the Court can grant the necessary ground for mistrial.

THE COURT. The Court will deny the motion for severance of defendants Hamlin, Reynolds and Woodmansee. It seems to the Court that the question of any adverse publicity as far as Mr. Woodmansee, and perhaps Mr. Hamlin, is concerned can be handled by voir dire with the particular jury at the time the jury is selected, and the Court has in mind the fact throughout the trial there might be a possibility of severance should prejudicial matters arise that cannot be handled, as far as the jury is concerned, though appropriate instructions by the Court, and further, of course, if the Government fails to make its case, the Court can always grant the motion for acquittal and appropriate motions will be heard at the appropriate time. So all the motions for severance are denied, which brings us, I suppose, Mr. Agel to the question of your further representation of Mrs. Reynolds. Is it Miss or Mrs.?

MR. AGEL. Ms. Reynolds. It is Mrs., your Honor.

THE COURT. All right.

I believe my ruling should be changed, I will so indicate.

MR. KILMARTIN. Thank you, your Honor. We will furnish that.

THE COURT. Now, we'll listen to you on Rule 21 memorandum in which you request a change of venue in this matter.

MR. KILMARTIN. Yes, your Honor. We realize that the burden is substantial here and further realize that the courts have attempted to devise ways in voir dire to overcome any inherent prejudice. We think that the latter vehicle which the courts have used overcome prejudice against a defendant on the part of a potential jury panel may be inadequate here. One, because the cases which have denigrated the effect of newspapers and television publicity on the capability of the courts in providing a fair trial have usually dealt with urban areas, and I think the Court will note we have tried to point the Court's attention to what we consider to be a kind of unique market of ideas that exist in Vermont. We are not dealing with four or five metropolitan newspapers in New York where there is a broad spectrum daily of sensational publicity about many defendants, many crimes. We are dealing with a medium market which is controlled by two vehicles, the BURLINGTON FREE PRESS in terms of where this Court is sitting now; with WCAX T.V.. It is impossible, based on my conversations with Marcellius Parsons to fully

document to the Court the coverage which they have afforded to the defendant Bernard Woodmansee over the past ten years; impossible only in the sense it would be a monumental task which would take longer than any trial, or preparation for a trial. With the FREE PRESS it is a little easier. We have attempted to document their rather long and intensive publicity. they have given to Bernard Woodmansee over the last ten years, and have done this by copying, for the Court's benefit, every article which we could find that was carried by the FREE PRESS.

In addition, we are presently completing the other two tasks which we pointed out in our memorandum--a survey drawn from the prior jury panels which have served in the court, where the court selects forty or so for service. We are going back using the list of this past panel and will be surveying those by telephone.

THE COURT. Which past panel are you talking about?

MR. KILMARTIN. These are the panels of forty or so you periodically draw for service to survey their attitudes as to the publicity about Bernard Woodmansee.

THE COURT. Where are you starting? What panels are you starting with?

MR. KILMARTIN. I asked Mr. O'Neill to obtain from the court clerk this morning panels previous to any one presently in service. We don't want to interfere with pros-

pective jurors.

THE COURT. I hope not.

MR. KILMARTIN. That is our purpose in going back. Also, we'll be using the basic voter checklist from which this court draws its jurors.

THE COURT. I have no objection to any procedure that you wish to employ. The basic problem I have with this is, I happen to think it can be handled by voir dire.

MR. KILMARTIN. I understand.

THE COURT. I don't care how large or how many surveys you have, or what you use for your base, or what individuals you have. We are concerned with approximately fifty jurors or so, who will be here to hear this particular case, and if we can select from that group those who either do not know Mr. Woodmansee's publicity, or otherwise, or those who we think would not be prejudiced by virtue of knowing of him, then I think we can say we have selected a fair and impartial jury to hear this case. Why do you think voir dire cannot accomplish its mission in this regard?

MR. KILMARTIN. In all candor, your Honor, because I think that many jorors will not be honest and open about their prior opinions, notwithstanding inquiry from the Court. Prejudice is not an objective matter. It is not something that falls in a category we can describe as pertaining to factual accuracy, and a juror when he is questioned either

in chambers on the record, or as part of the panel in open court, knows what the right answers are frequently and will not want to reveal himself as a person who is influenced by what they have previously seen or heard about the Defendant Woodmansee, and I think it is some times--and I am not saying this is true merely of the Court, but I think it is true of counsel for both sides that at times we are very nieve in believing that all the jurors are honest about their feelings all of the time and have courtroom seating. The very set of expectation we, as attorneys, and the Court puts upon jurors through the general charge and our questions suggest to them it is wrong to be prejudiced; wrong to acknowledge this in their seating, and I am not confident voir dire is going to expose this. That is not to say I don't have a lot of confidence in voir dire, because I do, but in this particular case after I looked at the wealth of publicity--what I consider a wealth of publicity--that the FREE PRESS has had on the Defendant Woodmansee and realize the position that particular paper has and what I have observed in the northwestern quadron of Vermont, and also attempted from my own experience to look at how people who live in this part of Vermont would react to that kind of steady diet of news, I have come to the conclusion we might have a very difficult time getting a true sentiment of the potential jurors during voir dire.

THE COURT. Perhaps as the term progresses the

jurors develop a degree of sophistication as far as answering questions that may be put to them by counsel, but the jury that is going to hear this case will be a fresh panel, and they are not going to have all of that experience.

MR. KILMARTIN. I think the thing that struck me in Mr. Agel's survey, which was not predicated upon the population base which we propose to use, was even on that population base, Bernard Woodmansee was known by thirty-one per cent of the responses not merely as Bernard Woodmansee, but as a criminal. I find that astounding. I don't find it astounding when I go through the FREE PRESS and find the publicity he has been given, and find the public remarks of the present and past county prosecutors and certain remarks they have made when various cases have been on appeal and have been successfully won by Mr. Woodmansee.

THE COURT. Mr. Kilmartin, if you think the public remembers these in detail, I would be very much surprised if this is the situation.

MR. KILMARTIN. It is not a question of detail, it is a question of the general instinct.

THE COURT. Let's assume thirty-one per cent of the panel has some prior knowledge of Mr. Woodmansee, don't you think we can weed out that thirty-one per cent, leaving us with sixty-nine per cent that has not had any experience?

MR. KILMARTIN. That is possible. I don't

know what we'll be showing in terms of the real percentage from the population base that the court draws its jurors from, which is somewhat different than the population base which Mr. Agel's survey was based on, I think.

THE COURT. It is no different.

MR. KILMARTIN. It is different.

THE COURT. Different only to the extent that they are registered voters.

MR. KILMARTIN. I think what we will find at some point when the jury selection process is attacked on a broad base is that--and I speculated on this when I was a law clerk and wrote up the belief many people do not become registered voters who should be on juries, because becoming a registered voter takes affirmative action which many people are unwilling to do, and when the voter checklist is, or are examined, I think in this federal district that will be found wanting in terms of representation on a social, economic basis, education, wages, and even some ethnic representation will find to be out of kilter with those people truly eligible to serve as jurors.

THE COURT. We are not here to revise the system of selecting our jurors.

MR. KILMARTIN. No. My point is if my suspicions are correct that the voter checklist will have better educated people who read the paper and pay more attention to

the papers than a universal source of prospective jurors.

THE COURT. I don't think those who served as jurors will give you a very representative group of the population.

MR. KILMARTIN. One of the groups we'll use is not those who actually have done service, but we don't wish to inquire whether they have done service; simply whether they were called for jury duty.

THE COURT. I don't think that is any better than the public opinion poll that Mr. Agel had conducted, or if you make a random selection from voter registration lists.

MR. KILMARTIN. Well, what you have done, your Honor, by calling forty or fifty people at any given time in the last couple of years is randomly selected from the voter checklists in the way the system is built, and they would be, in a sense those panels of forty or fifty random groups selected from the voter checklist. There is a two-step selection process, but each is random in nature.

THE COURT. But they have had more exposure to the trial process and criminal process than probably the new group coming in.

MR. KILMARTIN. But one of the other groups in the survey we propose to do will be names just randomly selected from the voter checklist on which the court relies in drawing its panels, so there will be a mixture--one group

of people who have been called and one group of people off the voter checklist--but both those groups, we expect, would probably have more than a thirty-one per cent recognition factor because they are people who have been conscientious enough to go out and get their names on the voter checklist, and we think because of that would be better educated, higher up on the economic ladder and will probably be the kind of person to pay more attention to what they read than the population groups used in Mr. Agel's survey.

THE COURT. Mr. O'Neill.

MR. O'NEILL. Very briefly, your Honor, first of all, Mr. Kilmartin made an earlier statement--it wan't I--he asked to get copies of previous jury records from, I assume, he went to the Clerk of the court.

MR. KILMARTIN. I am sorry.

MR. O'NEILL. That is his project, not one we are involved in. In addition to a number of inherent problems in part of Mr. Kilmartin's memorandum, the real question is whether a jury can decide a case on the evidence presented. We have abundant faith voir dire can be conducted and a jury found. Otherwise, it is set out in our memorandum, and we see the Court's feeling and see no further need to go on with it, frankly.

THE COURT. Mr. Kilmartin, I think we can handle the voir dire in the matter in a manner that will ensure

your client of a fair and impartial trial at the hands of a fair and impartial jury, and if you wish to conduct further surveys, you are free to do so, and you are also free to furnish me with the results of that information, if you wish, but I don't think my ruling willbe any different than it is this morning, which is, I am denying your motion, but I would always reconsider perhaps at a later date, but I think we can handle the voir dire in a manner that will assure your client of a fair trial.

MR. KILMARTIN. The Court will recall the very last part of my memorandum, I suggested the Court could try to advance the vehicle of voir dire with some additional considerations attached to it to overcome what we describe as the prejudicial problem. At what point in time will we reach some agreement, or concensus or learn of the Court's procedures? How far in advance of trial, and could we inquire as to what type of procedures the Court would envisage using?

THE COURT. I think probably you would learn about it at the time we start to draw the jury, but I would think, recognizing the fact that your client, deservedly or not deservedly, has engendered a fair amount of publicity in the area. I think we would question the jury individually as to such knowledge as they might have regarding Mr. Woodmansee and from whatever source they might have derived it. However, I think those would be the only questions I would ask

of them individually, and I would ask everything else as a group, asking them to refrain from advising whether they know any of the defendants and so on and interrogate them individually.

MR. KILMARTIN. Out of the presence of each other?

THE COURT. Probably.

MR. KILMARTIN. Could the Court consider a sequestered jury for this trial?

THE COURT. No, I don't think so. The Court doesn't think it should be necessary to sequester jurors. The Court has more faith, perhaps, in the jurors than counsel do in these cases, and I think we can rely on the jurors not to be affected by any publicity there may be, and I might say that the bulk of the publicity that this Court has engendered are quite factual in their content and not of a sensational nature. Anything further, Mr. O'Neill?

MR. O'NEILL. Not that I am aware of, your Honor.

THE COURT. I might say if you have any specific thoughts about the procedure for interrogating jurors, I would accept them and will discuss them with counsel when we start the process. We'll stand in recess.

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(58)

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States of America	:	
	:	
v.	:	Criminal No. 76-38
	:	
Bernard Woodmansee, Sr.,	:	
Jacky E. DuBray,	:	
Roy M. Hamlin and	:	
Virginia Reynolds	:	

ORDER

In the above captioned cause it is hereby ordered as follows:

1. Trial will commence with the drawing of the jury at 9:30 A.M. on Wednesday, October 27, 1976 at the Courthouse in Burlington rather than at 1:30 P.M. on Tuesday, October 26, 1976 as presently scheduled.

2. The defendants jointly will be permitted a total of twelve preemptory challenges. Challenges will be exercised at the bench by counsel for the defendants in rotation in the order that their client's name appears in the heading of the indictment.

3. The Court, rather than individual counsel, will conduct the voir dire of the prospective jurors. Specific questions which counsel desire to be asked by the Court will be considered if filed in writing with the Court--preferably by 12:00 noon on Friday, October 22, 1976, but in any event no later than 12:00 noon on Monday, October 25, 1976. Requests by counsel for additional questions to be asked on voir dire in response to specific answers to particular questions by prospective jurors shall be submitted in writing at that time for the Court's consideration.

(59)

4. As requested by certain of the parties, the jury members and alternates will be sequestered in accordance with an Order of Sequestration filed this date.

5. During the course of trial, any objections made to the testimony of a witness by counsel for any of the defendants shall be deemed an objection as to all defendants without the necessity of joining therein unless a defendant specifcally requests that such an objection not be so considered as to him or her.

6. An informal pretrial conference will be held at 3:00 P.M. on Tuesday, October 26, 1976 at which all counsel are expected to attend. At that time, the mechanics of trial will be discussed as well as any other items of interest to the Court or counsel.

Dated at Burlington in the District of Vermont, this 20th day of October, 1976.

Albert W. Coffrin
District Judge

(60)

REPORT

A survey was conducted in northwestern Vermont in the last week of September, 1976 to determine the level of recognition of Bernard Woodmansee, sources of knowledge about Woodmansee, perception of Woodmansee and opinions as to whether Woodmansee could receive a fair trial in the Burlington-St. Albans area. Respondents were selected from the lists of possible jurors for such a trial.

PROCEDURE

Two random samples were taken from the voter checklists of all area towns. These checklists were current as of January 1974 and are the lists currently used for juror selection. The method for the selection of the samples followed the procedure used for juror selection, beginning at a random number and proceeding through the checklists. For this procedure, the checklists themselves were arranged alphabetically by town. Statistically, the merging of two random samples will result in another random sample. This procedure was conducted by William J. O'Neill of Rexford, Kilmartin and Chimileski and resulted in an original sample numbering 713.

Using the Burlington and St. Albans area directories, an attempt was made to find telephone numbers of each of the 713 names. In the case of female respondents, some approximation was involved. Since the checklists from which names were selected were over 2 years old, there was a good deal of slippage in the sample. Students at Trinity College, St. Michael's College and the University of Vermont were automatically eliminated. Individuals who moved outside the area and, with few exceptions, those who moved within the area were also eliminated. Individuals without telephones and those with unlisted numbers could also not be located. In cases of duplications in residences, only one individual was retained as part of the sample. This procedure was also carried out at the firm of Rexford, Kilmartin and Chimileski.

The need to attach phone numbers to the names in the sample reduced the sample size significantly. However, the point should be made that the resulting list is, in fact, a sample of those most likely to be called for jury service. In effect there was a final sample of 385 individuals who were registered voters, resident of Vermont at least two years, with stable residences and listed telephone numbers.

Telephoning was done between September 27 and October 1 by interviewers trained by me. Each number was called at least three times during that period, with at least one phone call made during the afternoon. If there was no answer after three attempted contacts, the name of the respondent was dropped. The interviewers attempted to reach the correct reposndent at each residence. If the sample name could not be reached, another adult in the household was interviewed. Six of the numbers were either disconnected or not in use, leaving 379 valid numbers. Of that 379, 239 contacts resulted in successful interviews, a response rate of 63%. The remainder of the numbers were either not successfully contacted or the contact resulted in a refusal to participate by the respondent. The relatively high response rate is due in part to the selected nature of the sample, as well as to the skill of the interviewers. Because interviewers were instructed to conduct an interview with an available adult in the household, if the proper respondent could not be reached, there were several instances

of individuals interviewed who were not registered voters in 1974. The number of these cases is small (N=8) and does not appear to significantly affect the results.

Interviewers introduced themselves by name and identified themselves as calling for the "Vermont Political Research Project." Respondents were informed they were selected at random and that individual responses would remain confidential. The interviewers themselves were not given the names of those in the sample, but were asked to contact an individual of the proper sex in the household. If the respondent asked for whom the survey was being conducted, interviewers were told to respond that it was being conducted for "a law firm." The interviewers themselves did not know the name of the firm involved.

A number of respondents guessed the purpose of the questionnaire. In the few instances in which this occurred, interviewers reported surprisingly non-hostile reactions. One male respondent who claimed to have been a member of the Vermont Legislature volunteered the following: "I see what you're getting at. Sure he should have a chance of venue, he can't get a fair trial here. Too many people know him. Try him in Rutland."

RESULTS#

Sex of respondent	Male	44%	
	Female	56%	
"Are you a registered voter?"	Yes	96%	
	No	4%	
"Do you read the Burlington Free Press?"	Yes	88%	
	No	12%	
"Do you watch television news shows on Channel 3?"	Yes	87%	
	No	13%	
"Have you ever heard the name Bernard Woodmansee?"	Yes	57%	(N=137)
	No	43%	(N=102)
"With what do you associate this name?" (asked only of those who answered "yes" to previous question)	Correct ID	84%	(N=111)
	Incorrect ID		(N=2)
	Don't Know		(N=20)

Percentages were computed on the total valid answers for each question;"N" refers to the number of cases which fell into each separate category.

Percentages of all respondents who correctly identified Woodmansee and claimed to have heard the name 47%

The following questions were asked only to those who correctly identified Woodmansee:

"Where did you first hear the name Bernard Woodmansee?"	The Free Press	49% (N=52)
	TV	21% (N=22)
	Other Sources	10% (N=11)
	Don't know	18% (N=19)
"Do you recall reading about him in the Free Press or hearing him mentioned on TV or radio?"	Yes	90% (N=103)
	No	6%
	Don't know	4%
"Have you ever heard of Bernard Woodmansee named as a defendant in a criminal case or in connection with criminal activity?"	Yes	75% (N=91)
	No	(N=12)
	Don't know	(N=12)
	Refused to answer	(N=6)
"Do you believe Bernard Woodmansee is widely known in the Burlington area as a criminal?"	Yes	62% (N=69)
	No	(N=5)
	Don't know	(N=37)
"Do you believe that a jury made up of people from the greater Burlington-St. Albans area could judge Bernard Woodmansee fairly and impartially in a criminal trial, ignoring his past reputation?"	Yes	54% (N=64)
"Do you believe that you yourself, if a member of such a jury, could be totally fair and impartial in judging Bernard Woodmansee, ignoring his past reputation?"	Yes	51% (N=60)

<u>The following questions were asked only of those who said they have not heard of Bernard Woodmansee</u>:

"Some people feel that it is impossible for any jury to ignore what they know of the reputation of a defendant and judge him fairly. Others say that a jury can judge any defendant fairly, no matter what they know about his career. How do you feel? Do you think that a jury made up of people from the greater Burlington-St. Albans area could completely ignore an individual's reputation and judge him fairly and impartially in a criminal trial, or do you think they would be influenced by his past reputation?"

Jury would be fair and impartial 29% (N=33)

"How about you? Could you yourself, if a member of such a jury, completely ignore an individual's reputation and judge him fairly and impartially in a criminal trial, or do you think that you would be influenced by his past reputation?"

I could be fair and impartial 47% (N=52)

<u>The following are the combined totals for both subgroups on the two jury-related questions</u>:

-Could a jury be fair and impartial?-	Yes	43% (N=97)
	No	39% (N=90)
	Maybe	(N=7)
	Don't know	(N=31)

-Could you be fair and impartial?-		
	Yes	49 % (N=112)
	No	37% (N=84)
	Maybe	(N=3)
	Don't know	(N=31)

ANALYSIS

The major finding of this study is the relatively high percentage of the "likely juror" population which recognizes the name Bernard Woodmansee. 57% of all those surveyed claimed to have heard the name in the past. Even eliminating those people who claimed to be familiar with the name yet could not associate it with courts or past offenses, 47% of the entire sample population had correct knowledge of Woodmansee. One reason for the difference in results from the previous survey is the difference in the survey population: the first survey sample was drawn from the current telephone books while this survey is taken from those who populate the current juror selection lists, and is limited to those individuals with stable residences and telephones.

The recognition level of Woodmansee can be considered very high, especially when compared to national recognition levels for public officials. For example, less than one-half of the population can name their own Congressman; one quarter or less can name any of their representatives in the state legislature. Although the percentages recognizing such officers are probably higher in the State of Vermont, Woodmansee's recognition level would still have to be considered extremely high, considering that he holds no public office, and his name has appeared in the media only sporadically over the past 15 years.

A sizeable percentage of the sample were readers of the Free Press and watchers of WCAX-TV news programs. Similarly, nearly all the respondents who recognized Woodmansee claimed to have either read about him in the Free Press or seen him on television news shows. Very few of those who were familiar with Woodmansee could firmly assert that he was not widely known in the Burlington area as a criminal.

Opinions varied on the possibility of Woodmansee, or another defendant, receiving a fair trial in the Burlington area. One glaring discrepency occurs between the opinions of those who recognized Woodmansee and were given the jury questions with Woodmanss as example, and the opinions of those who did not know of Woodmansee and were presented with a hypothetical situation. In the abstract, respondents were quite unlikely to assert that an individual could be tried by a jury that could totally ignore the defendant's reputation; yet a majority of those who had heard of Woodmansee felt that his reputation could be ignored.

The actual distributions on the two jury questions follow:

FAIRNESS OF BURLINGTON AREA JURY

	Recognized Woodmansee	Did not Recognize
Jury could be fair	64 (54%)	33 (20%)
Not sure/Don't know	25 (22%)	17 (15%)

Jury could not be fair	28 (24%)	62 (55%)
Chi square	p=.001 C=.306	

INDIVIDUAL FAIRNESS

	Recognized Woodmansee	Did not Recognize
I could be fair	60 (51%)	52 (46%)
Not sure/Don't know	23 (20%)	10 (9%)
I could not be fair	34 (29%)	50 (45%)
Chi square 8.26	p=.02 C=.187	

Chi square and p should be read together. Chi square is a measure of statistical inference, used by social scientists to determine whether or not two or more groups in the population differ significantly on any other measure. It is used in this case, to test the null hypothesis that the group which recognized Woodmansee and the group that did not are similar in perceptions of his ability to get a fair trial. The chi square once calculated is used to determine p. which is the percentage likelihood that the distributions on the two tables occurred purely by chance. Chi square, and therefore p as well are inferential statistics appropriate in testing whether or not the relationships and distributions in a sample population (which this is) also exist in the population as a whole.

Social scientists generally reject the null hypothesis when p is less than .05 and in both tables presented above, p is less than .05. One can, therefore, reject the null hypothesis that the distributions occurred by chance and say with assurance that there is a relationship between recognition of Woodmansee and the perception of the likelihood of both the jury and the individual himself being capable of ignoring prior evidence and judging the case on the evidence alone.

C Stands for contingency coefficient, a measure of the strength of the relationship. For a two by three table, C can vary from 0 (no relationship) to about .8 (perfect relationship). The C's for both tables would be classified in the low moderate to moderate range; in other words, knowing a respondent's answer to the question "Have you heard the name Bernard Woodmansee?" would allow you to predict his or her answer to the jury-related questions to a certain extent, albeit not perfectly.

The substantive interpretation of these results should made with great care. Although some of the difference in answers may be due to question wording, I do not feel the wording to be the major source of the difference. Clearly, the hypothetical question produced answers which cast doubt on the relevant public's belief that any jury can disregard prior offenses in judging a defendant; the public is clearly sensitve to the issues involved in chage of venue motions. Since the question specifially asked about people in the Burlington-St. Albans area, the answers may indicate a lack of confidence on the part of

respondents about the mental capacity of their neighbors, (notice the difference among those given the hypothetical case between the perception of "fairness" on the part of a jury from the area and the perception of the respondent's own ability to ignore reputation). Similarly, individuals given the hypothetical case were somewhat more likely to express doubt on their own ability to judge fairly than were the individuals presented with the example of Woodmansee.

The important difference and the one which is worthy of further analysis, however, is the clear, and significant difference on the questions of jury and personal fairness between the group knowledgeable about Woodmansee and those unfamiliar with him. One interpretation of these differences suggests the possibility of bias among those individuals who have heard of Woodmansee.

The findings here are similar to those discovered in research on civil liberties (see Samual Stouffer, Communism, Conformity and Civil Liberties). Stouffer discovered that though the population was willing to support the general principle of freedom of speech, it was unwilling to support the same principle when faced with a specific example involving the principle's application. For example, although a majority of the population would agree with the statement " Freedom of speech should be guaranteed to all," a majority would deny freedom of speech in specific cases, in answers to questions like "Should a socialist be allowed to speak in your community?" and "Should a person who has been accused of being a communist be permitted to speak in you community?"

The questions used in this survey are similar to the above, in that one question asks about the general ability of a jury to ignore prior information and the other asks about the ability of people to do the same in a specific case. The interpretation of these results highlight a point made by Stouffer and other political and social scientists. We cannot assume that individuals will take a general principle in which they believe (freedom of speech, in Stouffer's book, the difficulty of assuring a fair trial; given knowledge of past behavior of a defendant; in this instance), and apply it in a specific set of circumstances. In fact the very opposite may occur. In Stoufer's instance, the individual's prejudices and feelings towards the group or individual involved significantly reduces the likelihood of civil liberties=supportive answers.

The same pattern arises in this survey. The population as a whole may question the ability of any "notorious" individual to receive a fair trial; when Woodmansee's name is mentioned, the respondents no longer make this claim. Since this is consistent with the earlier research the data do raise doubts about both the honesty of the group recognizing Woodmansee, and certainly about their ability to judge fairly in this instance. We can link these findings with the results of the earlier Woodmansee survey. Since we know that general feelings about Woodmansee are strong and negative in the Burlington-St. Albans area, we could assume that these prejudices are influencing those aware of Woodmansee's reputation in ignoring what seems to be the basic scepticism about the ability of "likely jurors" in this case to give a well-known individual a trial on the evidence.

One further difference in results should be pointed out, and that is the lack of any increase in the percentage claiming a personal

ability to ignore prior reputation among those familiar with Woodmansee. Among those given the general, "hypothetical" question, 46% say that they personally could judge fairly, an increase from the 29% of the same group who said that a jury from the area could judge fairly; among those who recognized Woodmansee, there was no comparable increase; in fact, a slight decrease occurred. Respondents familiar with Woodmansee may be indicating some doubts about their own fairness, and a realization of their own prejudices in this case.

There is one clear difference between subpopulations in the sample. Residents of the Burlington area (Burlington, South Burlington, Shelburne, Winooski, Colchester and Essex) were far more likely to have heard of Woodmansee than residents of other towns. 70% of the residents of the Burlington area were familiar with Woodmansee's name. That group comprised about half of the total sample, and Woodmansee's recognition level drops to 44% in towns outside the Burlington area.

The basic finding in this survey, however, is clear. Even with the consideration of an estimated 5-6% sampling error, we can say with confidence that the recognition of Woodmansee among likely jurors exceeds 50%. To be specific, there is a 95% probability that the actual recognition level among <u>all</u> likely jurors ranges from 51% to 63%. Even if we take the smaller figure, that is, those who had heard of Woodmansee and could link him with previous criminal activity, we can be fairly certain that the entire population includes at least 41% and perhaps 53% who, on hearing Woodmansee's name, immediately link him with crime. At any rate, we are dealing with a group in which approximately 50% or more have some knowledge of the defendant. This datum alone raises some interesting problems. Social scientist have asserted that when 50% or more of a population holds a certain view, that opinion can be considered as a "community norm". Those individuals who have different views may be regarded as "deviant" and under some pressure to change their views to conform with the majority. This has been confirmed by a number of studies on small-group behavior. Knowledge of Woodmansee and the consequent negative evaluation of him, may very well be a "community norm" among the "likely juror" population. If it is, even those individuals who currently claim no knowledge of him may, under certain conditions, be affected by that majority which knows of him and has distinctly negative feelings about him.

October 23, 1976
Submitted by Kathleen A. Frankovic, Ph. D.
Political Science Department
University of Vermont

MR. KILMARTIN: Your Honor, we requested the Court to receive evidence in connection with previously filed Motions for defendant Woodmansee for a change of venue, and also to talk about some evidence in connection with our request for both the questions on Voir Dire, and the procedures to be used. Specifically, we would have thought to show through Dr. Frankovic, who prepared the report dated October 23, 1976, which we have submitted for the record, the following:

1. That there is a relationship between the results of the first survey which Mr. Agel had prepared for Mr. Woodmansee's defense and the second survey which Dr. Frankovic drew up as submitted to the Court. The relationship that she would have testified existed, is that the negative or hostile feelings on the part of those persons making a response in the first survey about Bernard Woodmansee, would be found in approximately the same percentages amongst those who recognize Bernard Woodmansee

and could correctly identify him in this second survey. That that would be a valid statistical inference which could be drawn, and the purpose of the graph of .0 to 100 used in the first survey was to distinguish between persons in the community who had wide recognition, and among that class of persons the kinds of feelings which people had about them, so as to determine who was famous, by virtue of their stature, and who was notorious.

In terms of the second survey we would have expected Dr. Frankovic to have emphasized and made possibly more clear certain points which are made in the second survey. In part our purpose of wanting to present her was because of this... counsel's own lack of complete

understanding of statistical inferences. Specifically, we believe that she would have emphasized the point that many people who recognized Bernard Woodmansee and gave opinions as to whether they could individually try him fairly, or whether he could be tried fairly by other potential jurors, were more willing to say that they could try him fairly than those persons who were asked that question in the abstract, ...and that there was an inference, based upon the study which she referred to as the Stauffer Study, which suggests that those persons who recognized Bernard Woodmansee and correctly identified him claimed they could give him a fair trial were not completely candid in their views, and that there is a substantial likelihood of hostility of those

persons, notwithstanding their claim of impartiality. We think the importance of this testimony since she would have also indicated that valid inference about a particular panel we are going to draw from, could be obtained from this survey.

That in order to meet the burden set forth in Irvin v. Doud, notwithstanding the claim of impartiality of the jury who recognizes and has knowledge of a defendant's prior record, that the defendant still has the opportunity, and in fact, the burden of demonstrating that the claim is not an accurate and true one, and in all candor we were very surprised by the results of the survey in this respect. At the time we commenced the survey we did not realize that this inference would be drawn from this particular survey, the inference that perspec-

tive jurors who know Bernard Woodmansee by reputation would falsely claim that they would be impartial when, in fact, they were indicating partiality through statistical inferences. We know of no other way of invading the mind of the perspective jurors to test the honesty or truthfulness of his response.

THE COURT: What do you say as to those who had no knowledge of Mr. Woodmansee?

MR. KILMARTIN: The reason for suggesting that those who had knowledge of him were being less than candid in their response, that impartiality is in part premised upon the response and answers given by those who did not know Bernard Woodmansee, and responding to the same question in the abstract about a person with a criminal reputation and whether that reputation could be disregarded.

In addition, Dr. Frankovic would have indicated to the Court, I believe, based on my conversations with her, that the framing of the questions and the sequence in which they were posed was

of as a non-bias nature as one could obtain, and that the questions were designed and the sequence designed so as to not obtain a preordained result, but an accurate and true reflection of the thinking of the persons being interviewed. The Doctor would have also indicated that one of the significant differences in the increased recognition of Bernard Woodmansee as a criminal, in the second study, the second opinion poll, was due primarily to the difference in the origins of the population...the first population being drawn from the phone book...the second population being drawn from what she considered a stable list of people, who were obviously by virtue of having been on a 1974 check list have lived in the area for two or more years, and that this related to the hardening of attitudes as well as the recognition level to Bernard Woodmansee, because people who have come to the community more recently would not have been aware of the spade of publicity which Bernard has received in the Free Press over the last nine or ten years. We would ask to make a part of the record an article appearing in the Burlington Free Press on October 10, 1976, which appeared on the front

page, or the national page of the Sunday News, or the Sunday Vermont Free Press, entitled "Unsolved Murders Haunt Investigators" in which is mentioned Bernard Woodmansee as having been found to be an accessory after the fact in the shooting death of the Lestage killing. We would also ask the Court to review, and I have it elsewhere in the Courthouse, the Voir Dire conducted in the Vermont District Court of the State of Vermont in 1973 when Mr. Woodmansee was convicted of being an accessory after the fact in the Lestage murder....so that the Court can see for itself the difficulty that that court had in 1973 of finding people who neither knew Bernard Woodmansee or were not in someway related to one or more of the principal defendants or victim or relatives in the particular murder case.

We believe that the publicity which surrounded that, together with the Vermont Supreme Court's decision which we have attached to one of our filings with the Court in connection with their motion, indicates that when there was a spade of publicity at that time, the jury drawn more primarily from Chittenden County than the larger

jury we may be dealing with, had an extremely high degree of knowledge of Bernard, or persons involved in the crime...and Bernard, if you will, examine closely the press clippings which we filed in connection with our Motion for a Change of Venue,....was tried alone as an accessory after the fact, and there is certainly an awful lot of political type of comments made by a former State's Attorney, and the now State's Attorney in Chittenden County in those articles, and we think when the Court reviews that trial in terms of its Voir Dire, and the newspaper articles, and then even after Dr. Frankovic's survey was made, this article, which is a laundry list of unsolved murders, with Bernard being tossed in, that we believe the Court will be convinced it is going to be difficult to find a fair jury, and we would ask if the Court permits that this article be made a part of our previous filings of press hearings with the Court.

THE COURT: We will allow that.

MR. KUPERSMITH: Your Honor, if I may I would like to add, for the sake of the record, that on behalf of Roy Hamlin I would like to join in Mr. Kilmartin's Motion, on the basis that any adverse

feelings that there may be in the community or in the impanelment, towards Bernard Woodmansee would of necessity be transferred to anyone here associated with him and tried along with him.

THE COURT: Mr. O'Neill, do you wish to respond?

MR. O'NEILL: We have examined the survey and conducted our own examination of late in this area. Obviously if the Court was to find the defendant was entitled to a trial in another district it would be to our disadvantage to go through two trials, as well as we have the whole question, as also the Court has, is whether or not the individual jurors can fairly determine the guilt or innocence of the particular defendants. I would like to make a comment or two, if I may,... in the case of United States v. Bowe, which is Second Circuit, August, 1966, 360 Fed.2nd, Page 1, Second Circuit, and this is better known as "Conspiracy to Blow Up the Statute of Liberty Case"...perhaps needless to say that case did get a fair amount of notoriety, even from a national standpoint, where it was noted the pre-trial publicity was so extensive, so that the examination of the entire panel revealed such prejudice the Court could not believe the answers

of the jurors and would be compelled to confirm bias or prejudice as a matter of law. We also looked over cases involving, for example, United States v. Brown, which is 471 Fed.2nd 1040 D.C. Circuit case, 1972, which involved a murder of two FBI agents, somewhat different in some aspects of the case, but involves publicity and perhaps best noted in a more recent case United States v. Chapin 515 Fed.2nd, Page 1274, D.C. Circuit. The Court noted from another D.C. case, which is a standard, that the ultimate question is whether it is possible to impanel a fair and impartial jury, and the proper action is upon the Voir Dire examination. We strongly believe the Voir Dire here will determine whether or not they can here be impartial. If they cannot, we will join in asking the Court to send it elsewhere. We believe they will be able to.

THE COURT: As the Court indicated earlier Mr. Kilmartin the report of Dr. Frankovic has been made a part of the record, and the Court is willing to accept the statements in that report at face value, and the Court is also willing to accept your statement made as to what she would testify, at face value, for purposes of the record. It is the

Court's belief that what we are trying to accomplish in this case is a jury without, so far as we can, as human beings, without prejudice or bias to either the Government or the defendant... a jury that can render an impartial verdict... and the Court has high hopes, at least at this juncture, that through the Voir Dire we can accomplish this to the satisfaction at least of the Court, if not to the satisfaction of the counsel, and with that thought in mind we will proceed. We propose to proceed, as I previously indicated, as far as interrogation of the jurors and the method of handling the specific questions, which will be done separate and apart from the general panel.

MR. LINNAN: In behalf of Mr. DuBray I would join with Mr. Kupersmith in the Motion.

THE COURT: Mr. Agel, do you wish to join in the Motion?

MR. AGEL: I have no comment,Your Honor.

THE COURT: I want to show that you are here.

MR. KILMARTIN: There is one other matter I wish to place on the record. I do not, by my comments raised at this point, wish to infer any fault that I have or my client has with the Court itself, but it is my understanding that the Court's files

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

(78)

UNITED STATES OF AMERICA	§	
VS.	§	Criminal No. 76-38
	§	
BERNARD WOODMANSEE, SR.	§	

REQUEST OF THE DEFENDANT BERNARD WOODMANSEE FOR VOIR DIRE QUESTIONS OF PROSPECTIVE JURORS

Defendant, Woodmansee, requests the court to permit the following with respect to Voir Dire:

1. Permit counsel to conduct the voir dire of the jury in view of the particular problems of picking a fair and impartial jury raised by the knowledge and information contained in the most recent survey presented to the court on behalf of Defendant, Woodmansee.

2. All questions posed to jurors, no matter by whom posed, shall be posed to each juror individually out of the presence of other jurors primarily because determining an individual juror's knowledge about Bernard Woodmansee in the presence of other potential jurors would necessarily inform, color and prejudice other potential jurors who in fact have no prior knowledge of Bernard Woodmansee and his reputation as a criminal.

3. That each and every question posed in the attached request for voir dire be asked of each potential juror in the presence of the Defendant Woodmansee and his counsel. All attachments hereto are specific requests of questions to be asked on voir dire.

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PRELIMINARY PERSONAL QUESTIONS

80

1. Are you married?

2. What does your wife/husband do?

3. Can you tell me what kind of work you do?

4. How long have you been doing that kind of work?

5. Do you belong to a union?

6. Approximately how old are you?

7. Do you belong to any political organizations?

8. Do you read the Burlington Free Press regularly?

9. Do you get most of your television news from Channel 3, WCAX-TV out of Burlington:

10. Did you graduate from high school?

11. Do you own your own home or rent?

12. Where is your home?

13. How long have you lived there?

14. How many other places have you lived in the past ten (10) years?

15. Where are they?

16. Where were you born? When?

17. Has any of your income ever derived directly or otherwise from the United States Government or the State of Vermont?

A. Tell us why you received income from the United States Government or the State of Vermont; in what amounts and for how long a period of time.

B. Is there anything about your having been a recipient of such income which would make you feel obligated to believe witnesses employed by the State or to give a favorable decision to the Government?

C. Would the fact that you received such income affect your decision to acquit any or all of the Defendants?

18. Were you ever in the military service, which branch, rank?

A. How long did you serve? Where did you serve? In what capacity did you serve?

B. Were you ever involved in a military court martia Explain your involvement.

19. Have you received any education or training beyond high school and, if so, indicate the school attended or the source of the training; for how long you went to the school or were trained?

20. What community service organizations have you belonged to or participated in in the last ten (10) years, e.g. Red Cross, Community Chest, etc.?

21. Do you now or have you ever in the past used regulated drugs? If so, explain your use.

22. Has any member of your family or close acquaintance ever use regulated drugs? Have you ever known anyone who used such drugs?

23. Do you smoke?

A. How long have you smoked?

B. Approximately how many cigarettes do you smoke a day?

C. Do you ever suffer from shortness of breath?

D. Have you ever been treated for pneumonia, bronchitis or asthma?

24. Do you use alcohol?

A. What kind of beverage do you usually drink?

B. How often do you drink?

C. About how much do you generally consume per day?

D. Do you ever drink so much that you can feel the effects of the alcohol?

E. Have you ever been accused or convicted of driving while intoxicated?

25. Do you plan on abstaining completely from the use of alcohol during the trial?

OBSERVATIONS AND MEMORY

83

1. Would you say that you have a pretty good memory?

2. Do you ever feel that you are sometimes forgetful?

3. Is your hearing good? Have you ever been treated by a physician for any problems with your hearing?

4. Do you have good eyesight? Have you ever been treated for any problems with your eyes?

5. Are you presently being treated by a physician? If so, why?

6. Have you experienced any deaths in your family or amongst your close friends in the past year?

7. Are you now experiencing any physical, mental or emotional problems which will make it difficult for you to recall in deliberation the evidence and the demeanor of the witnesses and relate those to the instructions of the court.

8. Do you now or have you in the last six (6) months suffered from insomnia? Do you now or have you in the last six (6) months taken tranquilizers of any kind? If so, explain in detail your use of them.

9. Have you heard anyone talking about this case before today?

10. Have you heard of this case before today?

11. Since you came here for jury duty have you seen or heard anything which has led you to form some opinion on this case one way or the other?

12. Have you ever expressed an opinion about this case?

13. Have you ever said to yourself, "I think this man is guilty," or "I think this man is innocent"?

14. Have you formed any opinion from the news media, television and radio, that would be a burden for the Defendant to overcome?

15. Could you overcome that opinion that has been set in your mind?

16. Don't you think that that is a great burden for anyone to have to overcome in a charge as serious as the one the defendant is facing? Do you think you could overcome it?

17. Are you able to set aside that opinion and decide this case solely on the basis of evidence presented in this court?

18. Do you feel that you may have been so influenced by what you heard or read that you cannot render an impartial verdict in this case?

19. Why do you feel you have an open mind? What has come into your thinking that has eliminated the fixed opinion that you had that this was an open and shut case?

20. In other words, as far as you are concerned from the time of the crime until the present time, there has been nothing to change that opinion that you had that the Defendaht is guilty?

PRIOR JURY SERVICE

(85)

1. Have you, or has any close relative or close acquaintance ever served on a jury before?

2. What kind of case did this involve?

3. Where was the trial held?

4. What was the outcome of the case?

5. Did you agree with this outcome/verdict?

(Following questions to be asked each prospective juror as an actual member of a jury returning a verdict)

6. If you were a member of the jury, did the verdict reflect your original personal opinion? Did you change your opinion during deliberations?

7. If so, what was it that caused you to change your opinion?

8. Do you remember the attorneys involved? Who were they?

9. Did you, at the time, feel that you really understood what your function as a juror was and what the overall role of the jury was?

10. Were the judge's instructions clear to you in your previous jury experience?

11. Did any employees of the United States Government or of any State Government or local law enforcement agency testify in that trial?

A. About what subjects did they testify?

B. Did you find it ever a little bit easier to believe what they said on the witness stand because of their position as employees of the government?

12. In your prior jury experience did the Defendant testify? If answer is yes:

A. Do you think this fact by itself indicated anything about his guilt or innocence?

B. What was your attitude toward his testimony?

C. Did you vote to convict or acquit?

13. If Defendant did not testify, what did this fact by itself mean to you?

A. Do you think this fact by itself indicated anything about his guilt or innocence?

B. Did you vote to convict or acquit?

14. Do you think that there was anything at all in your prior experience as a juror which might affect your present ability to serve as a juror or to make a fair and impartial judgment in this case with regard to Mr. Woodmansee?

15. Does your knowledge of the criminal case you may have heard in previous jury duty make you cynical about criminal trials; make you cynical about defendants; make you cynical about defense attorneys?

UNDERSTANDING OF THE CRIMINAL JUSTICE SYSTEM

(87)

1. Do you have a general understanding of how the criminal justice system operates?

A. Explain what your understanding is of the criminal justice system on the Federal level. Specifically, what do you understand to be the functions of the prosecutor, grand jury, defendant, defense attorney, witnesses who testify and the documentary evidence which may be introduced.

B. Do you believe that the prosecutors are soft on criminals? Explain your answer.

C. Do you believe that courts have tied the hands of prosecutors in apprehending and jailing criminals? Explain your answer.

D. Do you believe that prosecutors engage in too much plea bargaining and let criminals get away with too much? Explain your answer.

E. Do you think that a majority of the other people in your community share the opinions which you have just described, or do you believe that you are in the minority?

F. Do you believe that juries and you as an individual juror have a responsibility to enforce the law and to, in effect, take a tough attitude toward people who are criminals?

2. Did you follow the Watergate trials involving John Mitchell, former Attorney General of the United States, John Ehrlichman, H.R. Haldeman, former personal advisors to President Nixon, very closely?

3. Are you aware of the admissions of FBI Director, Kelley, that he has destroyed evidence which might have been used to convict highly placed public officials?

4. Have you followed the recent reports in the journalistic media (press and TV) that the FBI and CIA committed crimes on a widespread basis in order that they could enforce the law more effectively against some crimes and persons they though should be convicted of crimes.

5. Are you aware that FBI Director, Kelley has admitted that the FBI has engaged in frequent breaking and enterings and the manufacture of crime in order to obtain evidence of the commission of crimes by others or to engage persons in cooperating with the FBI in committing crimes?

6. Are you aware that the FBI has frequently paid people to become a participant of an existing organization or to create an organization and then after they were involved in the organization to assist and cooperate with the other parties in the organization in the commission of crimes?

7. Do you believe that the FBI is capable of committing illegal activity in order to obtain the conviction of persons they consider to be criminals?

8. Do you believe that State and local prosecuting agencies are capable of engaging in crimes and illegal activity in order to obtain the conviction of people or a person that they think are criminals?

9. Do you believe that the FBI or its agents, state prosecutors or its agents or local prosecutors or its agents have ever committed crimes in the name of enforcing the law.

10. Have you had occasion to read and become familiar with the conviction of Paul Lawrence, a former state trooper and St. Albans police officer who was convicted of perjury and manufacturing crimes against innocent people.

11. Would your knowledge or belief about illegal activity of law enforcement agencies or their agents make it difficult for you to reject the testimony of law enforcement officers who might testify in this trial.

12. Would your knowledge or belief about illegal activity of law enforcement agencies or their agents make it difficult for you to accept the testimony of law enforcement officers who might testify in this trial.

13. Have you or has any relative or close acquaintance ever been, to you knowledge or information, a paid informant of the FBI, CIA, State prosecutor, or any local law enforcement agencies or other Federal enforcement agency such as the Federal Drug Enforcement Agency? If so, explain in detail your knowledge or information.

14. Have you or has any relative or close acquaintance ever been approached to be a paid informant or manufacturer of crime by a law enforcement agency.

15. Do you believe that it is a common practice of law enforcement agencies including the FBI and the prosecutors to us paid informants in order to obtain evidence of a commission of crimes.

16. Do you believe that a person accused of a crime would more willingly testify against someone the government desires to convict, if the prosecutor or a law enforcement officer offers a very good deal in return for the testimony.

A. Do you think that in such circumstances the person testifying in order to obtain a good deal would shade or distort the truth in order to make sure that he receives his "pay off" after his testimony.

17. Have you ever known or heard of anyone who was offered such a deal?

A. What kind of case did this involve?

B. How long ago was it?

C. What was the deal they were offered?

18. Do you think that giving a person consideration and payment in some form for his testimony is a legitimate technique for the government to use?

19. If such a witness testifies would you consider his credibility in light of the fact that he was being paid for his testimony.

20. Would you agree that in the position of being accused by the government of a crime you might feel a great deal of pressure to tell the government what it wanted to know or what would be helpful to it about another person in order to help yourself?

21. Do you think a person in such a position might go so far as to shade or distort the truth in order to help himself?

22. Do you think that this practice of "paying off" informants is a necessary practice on the part of the government?

23. If certain law enforcement officers or certain prosecutors were truly convinced that an individual was a notorious or habitual criminal and deserved to be put in jail, could you believe that they might actually "frame" him, in order to accomplish what they thought was best for society?

24. Do you realize that the prosecutors and defense attorneys are both lawyers, equal in the eyes of the law, each doing his best to represent his client?

25. Will you give any more weight to the arguments of any particular attorney because of the personality of the attorney, his status or title?

ALLIANCE WITH PROSECUTION

(92)

1. Are you related to or are you friendly with, or do you have any close acquaintanceship with anyone in either a state's attorney's office in Vermont, the U.S. Attorney's office here in Burlington or a prosecutor's office anywhere else ?

A. Have you ever discussed with him whether he believes that persons charged with crime are usually guilty?

B. What is your general opinion about his honesty or credibility as an individual?

C. How well do you know this person? How often do you have contact with him? Do you see him socially?

2. Are you related to, are you friendly with or do you have any close acquaintanceship with any police officer or law enforcement officer of any sort, such as federal revenue agents or military police or security guards?

A. Have you ever discussed with him whether he believes that persons charged with crime are usually guilty?

B. What is your general opinion about his honesty or credibility as an individual?

C. How well do you know this person? How often do you have contact with him? Do you see him socially?

3. Have you, yourself, ever been a police officer or military policeman or an employee of any law enforcement agency?

4. Have you ever had any responsibilities for industrial security or for investigating criminal acts of any sort?

5. Do you have any relatives or close acquaintances who are in any way connected with a law enforcement agency?

SUPPORT OF POLICE AGENCIES

1. Do you believe that local police should be supported by the citizenry?

2. Do you think the local police need any special help or support from people such as yourself?

3. Would you tend to believe the testimony of a policeman, just because he is a policemen, more than that of another witness?

4. Do you believe that the courts have "tied" the hands of policemen in doing their job? If so, do you believe that you have a duty in sitting as a juror to untie the policemen's hands?

CONNECTION WITH A CRIME

1. Have you or has any member of your family or any close acquaintance ever been the victim of a crime?

A. How long ago did this crime occur?

B. What was the nature of the crime?

C. Was the person who perpetrated this crime ever apprehended?

D. Was he ever convicted or punished for this act?

E. Do you think the criminal justice system worked effectively in this particular instance? Please explain.

2. Have you or has any member of your family or any close acquaintance ever been a complainant or witness in a criminal case?

A. How long ago did this crime occur?

B. What was the nature of the crime?

C. Was the person who perpetrated this crime ever apprehended?

D. Was he ever convicted or punished for this act?

E. Do you think the criminal justice system worked effectively in this particular instance? Please explain.

INDIVIDUAL CRIMINAL HISTORY

96

1. Have you or a close member of your family or close acquaintance ever been accused of a crime or even a misdemeanor such as a traffic offense?

A. What kind of offense did this involve?

B. Where did it occur?

C. How long ago was it?

D. How was it disposed of?

E. What is your opinion of the actions of the police officer or prosecutor involved?

F. What sentence or fine did you receive if you were convicted?

DEFENDANT'S PRIOR RECORD

(97)

1. Have you ever heard the name Bernard Woodmansee?

THOSE INDIVIDUALS WHO ANSWER, YES, TO THIS QUESTION SHOULD BE ASKED QUESTIONS #2 - #8 and #9 - #15.

THOSE INDIVIDUALS WHO ANSWER, NO, SHOULD BE ASKED QUESTIONS #2 (a) - #3 (a) and #9 - #15.

2. With what do you associate this name?

3. Where did you first hear the name Bernard Woodmansee?

4. Do you recall reading about him in the Free Press or hearing him mentioned on television or radio?

5. Have you ever heard of Bernard Woodmansee named as a Defendant in a criminal case or in connection with criminal activity?

6. Do you believe Bernard Woodmansee is widely known in the Burlington area as a criminal?

7. Do you believe that a jury made up of people from the greater Burlington - St. Albans area could judge Bernard Woodmansee fairly and impartially in a criminal trial, ignoring his past reputation?

8. Do you believe that you yourself, if a member of such a jury could be totally fair and impartial in judging Bernard Woodmansee, ignoring his past reputation?

2. (a) Some people feel that it is impossible for any jury to ignore what they know of the reputation of a defendant and judge him fairly. Others say that a jury can judge any Defendant fairly, no matter what they know about his career. How do you feel? Do you think that a jury made up of people from the greater Burlington - St. Albans area could completely ignore an individual's reputation and judge him fairly and impartially in a criminal trial, or do you think they would be influenced by his past reputation?

3. (a) How about you? Could you yourself, if a member of such a jury, completely ignore an individual's reputation and judge him fairly and impartially in a criminal trial, or do you think that you would be influenced by his past reputation?

9. Would the fact that a person has been convicted of two or three prior criminal offenses make it a little bit easier for you to believe that he was guilty of the present charges against him?

10. If you sat on a jury in a case involving a Defendant like Woodmansee, who has been as publicized as he has, and the jury acquitted him, wouldn't it be embarrassing to you?

11. Assuming that you were picked as a juror in this case, and you brought in a verdict of not guilty, would you find it embarrassing in the neighborhood that you are living in?

12. If you were to bring in a verdict of not guilty, would you have any embarrassment at all with any of your fellow workers?

13. Knowing what you do about this case and the Defendant Bernard Woodmansee and knowing any opinion which you have formed about this case, would you be willing to be tried by a juror like yourself or if you were Bernard Woodmansee, would you want such a juror excused? In other words, is there anything in your frame of mind at this moment which would make you unwilling to have a juror like yourself sit in judgment on you if you were the Defendant?

14. If you were so unfortunate as to be on trial instead of the defendant, would you be willing to place your fate in the hands of twelve persons in the same frame of mind as to this case as you are in today?

15. Do you agree with the American notion of fair play that one a person has paid a debt he should no longer be plagued by whatever lead to that debt?

CONSIDERATION OF EVIDENCE

99

1. Do you realize that the court will instruct you as to what principles of law you should follow in reaching a decision but that you as individual jurors are the sole and exclusive judges of the disputed facts in this case?

2. Would you judge this case exclusively on the evidence presented here in court and not allow any extraneous matters to affect your judgment and would you give Mr. Woodmansee the benefit of your own individual judgment when you vote on the ultimate verdict in this case?

3. If you were to reach your own conclusion that the prosecution had not proven Mr. Woodmansee's guilt beyond a reasonable doubt, and you found that the majority of the other jurors believed that Mr. Woodmansee was guilty, would you be able to vote your own conscience in spite of the fact that you are in the minority?

4. Are you aware of and do you truly believe in the principle that a man is presumed innocent until he is proven guilty by the government beyond a reasonable doubt?

5. Do you realize that you must give the defendant the benefit of this presumption of innocence without any mental reservations whatsoever?

6. And, do you realize that you must consider this presumption of innocence as actual proof of innocence until it is overcome by proof of guilt beyond a reasonable doubt?

7. Can you assure me that you will give the Defendant the full benefit of this presumption of innocence? You understand don't you that it is not the Defendant's duty to prove himself innocence and that it is up to the prosecution to prove that Mr. Woodmansee is guilty of the specific crimes he is charged with beyond any reasonable doubt?

8. If the prosecution does not fully meet this criteria, will you vote for acquittal?

9. Does the fact that Mr. Woodmansee has been arrested and has been charged with this crime create an impression in your mind that he must be guilty or else the government would not have gone to all this trouble of having a trial?

10. If you or a loved one of yours was on trial in this court today, and a juror with your life experience and state of mind were sitting on his jury, would you excuse that juror?

CONSPIRACY

101

Do you have any idea of what a criminal conspiracy is?

A. Where did you acquire these ideas?

If several people were to discuss the possibility of committing a particular crime and then at a later date one or two of those people actually committed the crime without the others being involved or perhaps even knowing about it, do you think those who were not involved in the actual commission of the crime but only in the original discussion are just as guilty as those who actually committed the crime?

MISCELLANEOUS

102

Do you or any relative or close acquaintance work for General Electric?

A. In what capacity?

B. Where is your office or plant located?

Do you or any relative or close acquaintance work for Bank of America?

A. In what capacity?

B. Where is your office or plant located?

Or American Express Company, any banking institution, a car rental agency?

Have you ever had occasion to rent an automobile?

A. Have you done this very often, how many times approximately?

B. What company or companies have you rented from?

C. How did you happen to need a rented automobile?

(103)

THE COURT: Government's 1 will be admitted in accordance with the discussion of counsel.

MR. NIEDERMEIER: Thank you.

(At this point Mr. Niedermeier plays Government's Exhibit 1)

Q. Mr. Churchill, is that the exact conversation you had with Mr. Woodmansee on May 15, 1976?

A. Yes, it is.

Q. Now Mr. Churchill as a result of that conversation what did you do?

A. I went to the Howard Johnson's in Burlington, off 89.

Q. And did you meet anyone there?

A. Yes, I did.

Q. And who did you meet there?

A. I met Bernard Woodmansee.

Q. Where did you meet him?

A. At the Howard Johnson's lounge.

Q. How long did you stay there?

A. Stayed there for about ten to fifteen minutes, maybe a little longer, but I don't think so.

Q. And then what happened?

A. Then we left.

Q. How did you leave?

A. In his Pontiac Lemans, green with a white top.

Q. Whose car was that?

A. Bernard's.

Q. Now while you were in the car did defendant Woodmansee say anything to you?

A. He wanted to know how many traveler's checks I could move.

Q. What did you say?

A. I told him about twenty thousand dollars worth.

Q. Did he say anything?

A. He said he would have to be sure, because the guys he was getting it from, if we don't come across with the moneys, they would do you and me in.

Q. Now when he used the word "do" what did that mean.

A. Take the traveler's checks and turn them into cash money.

Q. Who spoke first when you got in the car?

A. Bernard.

Q. Was there any mention made of traveler's checks before this time?

A. No, sir.

Q. Did he say anything then?

A. No, sir. I mentioned to him I wanted to know about the Government paper. He had mentioned to me a couple of weeks before, that meaning income tax checks and state checks.

THE COURT: Yes.

Q. Is that the person you referred to?

A. Yes.

Q. May the record so show?

THE COURT: Yes, the record may so show.

Q. Did defendant Woodmansee say anything when you got in the house?

A. Told me to sit down and relax. Said he had to make a phone call.

Q. What did he do?

A. He asked the woman to call Roy.

Q. What woman did he ask?

A. The same woman I indicated a few minutes ago, sitting over there.

Q. What did he say?

A. He said "will you call Roy for me".

Q. What did she do?

A. So she dialed the phone and apparently got somebody on it and handed the phone to Bernard.

Q. What did he do?

A. He says "yes, I have got somabody here". He said that and "we need twenty tickets".

Q. Did he say anything else?

A. Yes, we will show we can do them off. I need twenty tickets. He said "okay, fine, yes, see you

then, goodbye".

Q. Approximately, what time of day was this?

A. This was between three and four in the afternoon I would say.

Q. Did he say anything to you then?

A. And then he says "okay, we will go and try to look for John Savo".

Q. Now during the time that Mr. Woodmansee was talking on the telephone was defendant Reynolds there?

A. Yes.

Q. And was she in a position to hear what was said by Mr. Woodmansee?

MR. AGEL: Objection, Your Honor,

THE COURT: Yes, I will sustain the objection.

Q. Was she in the room?

A. Yes, she was.

Q. How close was she to the telephone?

MR. AGEL: Objection, Your Honor. There has been a lot of leading questions, Your Honor.

THE COURT: We will take the question.

A. She was sitting closer to the phone than I was.

Q. What did you do then?

A. Then we left the premises and we went looking for a guy named John Savo, and went to Bernard's son's house.

Q. Now did there come a time when you returned to the Howard Johnsons?

A. Yes.

Q. And how did you get back there?

A. Bernard Woodmansee drove me back there.

Q. Did he say anything to you on the way back?

A. To make sure I got hold of him...call him early in the day and come out, spend the day with him. If I needed money for things, or anything like that, he would help me out, and he said he would front fifty reds, seconals, sleeping pills.

MR. KILMARTIN: Your Honor,

(Bench conference)

MR. KILMARTIN: Your Honor, this involves proof of the commission of another crime, totally unrelated to any evidence. We believe it is inadmissible and prejudicial to defendant Woodmansee.

MR. NIEDERMEIER: Your Honor, we would say it goes to the activities of the defendant Woodmansee on that day.

THE COURT: I do not consider it prejudicial.

MR. KILMARTIN: There would be many activities which would be quite relevant in this case, physical activities, and we know of no relevance.

THE COURT: I can't see that is prejudicial as it is presently stated.

MR. KILMARTIN: Fronting seconals?

THE COURT: Is that what he said?

MR. KILMARTIN: Yes.

THE COURT: I don't know what that means.

MR. KILMARTIN: That means being the middle man for dealing in drugs. When you front for someone they give you the drugs with deferred payment.

MR. AGEL: Consignment.

THE COURT: I guess my experience has not involved the middle man.

MR. AGEL: That is the problem, Your Honor. Maybe there is someone on the panel that understands what he is talking about, and maybe what Duncan is asking reflects on the rest of the defendants. It is highly prejudicial and has nothing to do with this case, and they knew what type of answer would be elicited.

THE COURT: I do not see what it has to do with the case. I don't know why it is really necessary to get into it.

MR. NIEDERMEIER: I intend to ask no more questions. I simply asked what was said, that's all.

THE COURT: If the defendan want instructions to disregard that last portion about fronting fifty reds...is that it?

MR. KILMARTIN: He also said...the reporter might not have gotten it, but I got it, but either way he used

the word seconals.

(End of bench conference)

THE COURT: Ladies and gentlemen, that portion of the answer the witness gave in which he stated something about fronting fifty reds, seconals, as far as Mr. Woodmansee is concerned shall be disregarded entirely by you and it is hereby stricken from the record. It has no effect and has nothing....it is not for your consideration....it was as though it was not stated. Proceed.

MR. NIEDERMEIER: Mr. Churchill, after you arrived back at Howard Johnsons what happened?

A. I told him I would see him later and drove to the Williston rest area on 89.

Q. Did you see anyone at the Williston rest area?

A. Trooper Ruggiero, Trooper Leclair, Trooper Newman and Agent Zabowski.

Q. Now after that date, after May 15, 1976, did you make another call to defendant Woodmansee?

A. Yes, I did.

Q. And when was that?

A. That was on Friday, the 21st of May.

Q. Where were you when you made the call?

A. The State's Attorney's office in White River Junction, Vermont.

Q. Who else was present?

telephone call?

A. "They're on their way...relax, they will be here". I said "okay".

Q. What did you do then?

A. I relaxed.

Q. Now after that call did someone come to the house?

A. Yes.

Q. Approximately how long after the call?

A. I would say around twenty-five to thirty minutes.

Q. How many persons came to the house?

A. Two men.

Q. Was anything said when they entered the house?

A. I was introduced to them as Roy and Jacky, and they were introduced to me.

Q. Who introduced you?

A. Bernard Woodmansee.

Q. What did he say?

A. This is Roy...Jack, this is Mike, you know, and they came in and Jack handed Bernard a brown paper bag.

Q. Do you see the person introduced to you as Roy in the Courtroom today?

A. Yes, I do.

Q. Would you indicate where he is sitting and what he is wearing?

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A. Sitting in the corner of the table with the grey hair, round glasses...got a grey suit coat on.

Q. I will ask the defendant Hamlin to rise please...is that the person you just identified?

A. Yes.

Q. Your Honor, may the record reflect he has identified Mr. Hamlin?

THE COURT: The record may so show.

MR. NIEDERMEIER: Do you see the person introduced as Jacky in the Courtroom today?

A. Yes, sir.

Q. Would you indicate where he is sitting and what he is wearing?

A. Next to Mr. Hamlin...checkered sports coat on, sort of square glasses.

Q. Your Honor, may I ask defendant DuBray to rise?... is that the person you have just identified?

A. Yes.

Q. Your Honor, may the record reflect the witness has identified the defendant DuBray?

THE COURT: Right.

MR. NIEDERMEIER: What happened when they arrived at the house?

A. Handed Bernard a paper bag.

Q. How did that bag appear to you?

A. Full of something.

MR. LINNAN: Your Honor, objection...may we approach the bench.

(Bench conference)

MR. LINNAN: Your Honor, the last two questions, and I anticipate the next question, are leading and call for a conclusion on behalf of the witness.

THE COURT: The question was how the bag appeared to him, wasn't it.....I do not consider that a leading question.

MR. LINNAN: The first question before that, I believe it referred to the bag specifically as to who brought in the bag, and then how did the bag appear to you. Note my exception as being leading and calling for a conclusion, Your Honor.

THE COURT: We will note your objection and let the answer stand.

(End of bench conference)

MR. NIEDERMEIER: Mr. Churchill, again how did that bag appear to you?

A. Full of something.

Q. To whom was the bag given?

A. It was given to Bernard Woodmansee.

Q. By whom?

A. By Jacky.

Q. What did Bernard Woodmansee do then?

A. Got up from the kitchen table and walked into the other room.

Q. Did anyone else do anything?

A. Dixie went into the room with him.

Q. Did Bernard Woodmansee have anything with him when he left?

A. The brown paper bag that was handed to him by Jacky.

Q. What did you do?

A. I sat at the kitchen table along with everybody else.

Q. Then what happened?

A. Then Dixie came out, said "Mike, Bernard wants to see you in the bedroom".

Q. What did you do?

A. I got up and she walked me into the bedroom... showed me where it was.

Q. Who was there?

A. Bernard Woodmansee was there.

Q. What did you see?

A. I saw the brown paper bag, and in his hands I saw what he told me was four thousand dollars worth of traveler's checks he was going to give me.

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Q. Could you see what was in the bag?
A. Yes, I could.
Q. What could you see?
A. It was full of traveler's checks.
Q. What did he have in his hand?
A. He had a stack of them probably that thick.
Q. What?
A. Probably that thick.
Q. Of what?
A. Traveler's checks.
Q. Did he say anything to you at this time?
A. He said "this is the four thousand dollars worth I am going to give to you. Do them off by tomorrow. I will have eight thousand dollars more for you. I will meet...my son or me, one of us, will have the eight thousand dollars worth of traveler's checks".
Q. Eight thousand dollars more?
A. Yes.
Q. Did he say anything else to you?
A. Told me to cash them in and get a carton of cigarettes for them, and for all the cartons of cigarettes he would buy back from me and I said okay.
Q. Did he indicate to you how you were to cash them?

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A. Yes, I asked him. I said I don't know how to cash these can you show me how and he, you know, held one up and said "you write cash across here and any kind of name down here where it says signature. I said okay I have got to go see you later"

Q. Now during the time that you and Bernard Woodmansee were in the room was there anyone else present?

A. Dixie had walked me into the bedroom. She had left, but as he was explaining to me she walked back in and saw them again.

Q. Where was she when he was explaining how to cash the traveler's checks?

A. Walking around the bedroom.

Q. How close was she to you and Bernard?

A. She was fairly close.

Q. How large a room?

A. As a matter of fact I think one time she did sit down on the bed.

Q. Was there anything else on the bed?

A. Yes, there was a brown paper bag full of traveler's checks.

Q. Could you see what was in the bag?

A. Yes, I could.

Q. At the time she sat down on the bed do you recall where the other traveler's checks were...the four thousand

dollars you referred to?

A. He was explaining to me how to cash them, and then he handed them to me and I said "all right I have got to go".

Q. What did you do then?

A. Then I went to the Williston Rest Area, headed south on 89.

Q. Did you meet anyone there?

A. Yes, I did. I met Trooper Ruggiero, Trooper Newman Trooper Leclair, Agent Zabowski and there was lots of other State Troopers there.

Q. And what did you do?

A. I gave the four thousand dollars worth of traveler's checks to Trooper Ruggiero.

Q. Now Mr. Churchill I show you what has been previously marked as Government's Exhibit 4 for identification and ask if this looks at all familiar to you?

A. Yes, it does.

Q. What looks familiar to you?

A. The traveler's checks.

Q. Have you seen traveler's checks like that before?

A. Yes.

Q. Where?

A. Same ones I got from Bernard Woodmansee...identical to this.

Q. Now Mr. Churchill, after that date that you referred to as May 21, 1976 did you attempt to make another call to Bernard Woodmansee?

A. Yes, I did.

Q. At whose request?

A. At his. He told me to call him the following day.

Q. And where were you when he made the call?

A. I was at the Howard Johnson's in White River Junction, Vermont.

Q. And who else was with you?

A. Trooper Leclair, Trooper Ruggiero, Trooper Fields and myself at that time.

Q. To your knowledge was that call tape recorded?

A. Yes, it was.

Q. And have you heard that tape of that telephone conversation?

A. Yes, I have.

Q. And with whom did you speak?

A. I spoke with Bernard Woodmansee.

Q. Did you speak with him on the phone immediately?

A. No sir. I had to call another number.

Q. The first telephone conversation you had on that day, with whom did you speak?

A. That evening I spoke with Virginia Reynolds... again the woman I had known as Dixie.

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Q. Was that telephone call recorded?

A. Yes, it was.

Q. Have you heard the tape of that telephone conversation?

A. Yes, I have.

Q. When did you first hear it?

A. Right after it was taped.

Q. At that time was that an exact duplication of that telephone conversation?

A. Yes, it was.

Q. Have you heard it since that time?

A. Yes, I heard it four days ago.

Q. At that time was that the same conversation?

A. Yes, it was.

Q. Was that the same tape?

A. Yes.

Q. I show you what has been previously marked as Exhibit Number 3 for identification and ask if you can identify it?

A. Yes, I can.

Q. How can you identify it?

A. Because I got my initials right here, along with the....

Q. What is it?

A. Conversation between me and Dixie.

Q. On what date?

A. May 22, 1976.

Q. Your Honor, at this time I would move for the admission of that conversation?

THE COURT: Any additional objections?

MR. AGEL: May I inquire, Your Honor?

THE COURT: You may.

Examination by Saul L. Agel, Esquire: Is this the original of the tape?

A. Excuse me, sir.

Q. Is this the original of the tape?

A. Yes.

Q. How do you know that?

A. How I know that...because I was there when it was taped and right after we taped it we listened to it and four days ago I listened to it again.

Q. Have you had an opportunity in the last four days to hear the copy?

A. Excuse me?

Q. Have you had an opportunity in the last four days to hear the copy?

A. Yes, I heard the copy four days ago.

Q. Is what you heard the copy, or what you heard this?

A. What I heard was that there....the original conversation with the defendant.

Q. How can you distinguish this from the copy?

MR. KUPERSMITH: No, Your Honor.

THE COURT: Admitted as far as the telephone conversation of May 23 is concerned.

(Mr. Niedermeier plays another tape)

Q. Mr. Churchill, is that the exact conversation you had with Bernard Woodmansee on May 23, 1976?

A. Yes, it is.

Q. Mr. Churchill, as a result of that conversation what did you do then?

A. I went up to Montpelier, to Redstone, State Police Barracks.

Q. And who was there?

A. There was Trooper Ruggiero, Trooper Fields, Trooper Leclair, Agent Zabowski and lots of other FBI agents and State Troopers.

Q. And what did you do?

A. There I received thirty-nine hundred dollars in cash from an FBI agent.

Q. How did you receive it?

A. In a brown paper bag.

Q. What did you do?

A. Then I went down to the Stockyard Lounge and I sat in the parking lot.

Q. And what time did you get there?

A. It was about....right around quarter after twelve

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in the afternoon.

Q. How long did you wait?

A. I waited for about an hour and a half.

Q. Then what happened?

A. Then the FBI came up and told me they were already inside and to give them five minutes and to go in behind them.

Q. What did you do?

A. I did exactly what he said. I gave him five minutes and walked in behind him.

Q. When you walked inside the Stockyard Lounge who was there?

A. Roy and Bernard was leaning up against the window looking out. Bernard asked me where the hell I had been and I said I have been sitting out in the parking lot.

Q. Anyone else say anything?

A. Roy said not to worry about it, so they called me back up into the back room.

Q. Is the person you have called Roy the same person you have identified as Mr. Hamlin?

A. Yes, sir.

Q. What did you do then?

A. Then we went up into the back room and they insisted I have a drink, so they ordered me a drink.

Q. Was anyone else there?

A. Yes, Jack was there....the fellow I met that Friday.

Q. Is that the same person you previously identified in the Courtroom as Jacky?

A. Yes.

Q. What did you do when you got there?

A. Went up into the back room, like they said, they ordered me a drink. Bernard called me off to a little room on the side, how the curtain goes across. We went up back, closed the curtain, started to hand me an envelope. I told him I had the money out in the glove box of my car. He said "okay, fine". He put the money back in his pocket and I went outside to my car and got the bag of money.

Q. Where was this money?

A. In the Volkswagon, in the glove box.

Q. What did you do after you got the money?

A. Brought it back inside, let him know I had it... went back into the little room and he handed me the envelope and I handed him the money, and he asked if I needed gas money or anything. I said "yes, I can use some". He gave me two fifty dollar bills off the bottom of the stack and we went outside with Roy and Jacky.

Q. Who was outside?

A. Roy and Jacky, the same places as they were when we went in.

Q. Was there any conversation at this time?

A. Yes, they wanted to know if I could move the rest of them, and where they could meet me tomorrow and I told them they could meet me at the Hotel Coolidge at White River, where I would have the money for this six thousand and where they could give me the other ten, and Roy said that after the twenty thousand dollars was gone that he would have fifty thousand more and that we could go to Albany, New York, me and my boys, and work down there. He felt we would like it down there, and everything and I said "okay". So we talked a little more and I said "okay, I have got to leave."

Q. Now when you came out of this little room with a curtain, did you see what happened to the bag of money?

A. Yes, Bernard handed it to Jack.

Q. After your conversation which you have just related, what happened then?

A. Then I left...I went outside.

Q. And what did you do?

A. I gave the State Police and FBI agents the signal that the transaction went down....that I had the checks and they had the money. I ran to my Volkswagon and

got in it and drove straight to Redstone, State Police barracks.

Q. What did you do when you got there?

A. I went inside.

Q. What did you do with the traveler's checks that you received?

A. Well in three or four minutes Trooper Ruggiero pulled up and asked me if I received the traveler's checks, and I said yes, and handed him the envelope and he left.

Q. And what did you do with the two fifty dollar bills you testified you received from defendant Woodmansee?

A. After everything was all over with and they were apprehended they come back up to the office and stuff, and I handed over the two fifty dollar bills to Trooper Ruggiero and he marked them down as evidence.

Q. Now Mr. Churchill, briefly I would like to go back to your statement earlier that you did have a previous record. Would you tell the members of the jury what your previous criminal record consists of?

A. Consists of getting arrested for sales of drugs, grand larceny, B&E's.

MR. AGEL: I am sorry, Your Honor, I was writing something....the last question could we have it repeated?

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MR. AGEL: They are different and separate from those...okay.

MR. NIEDERMEIER: Mr. Churchill, on May 15, 1976 when you were at an address you indicated on Susie Wilson Road, I believe you indicated; is that correct?

A. Yes.

Q. Was it your testimony a telephone call was made?

A. Yes.

Q. Approximately what time was that made?

A. Made between four and five in the evening.

Q. And on May 21, 1976 were you also at Susie Wilson Road?

A. Yes, I was.

Q. Was it your testimony a telephone call was made at that time?

A. Yes.

Q. Approximately what time was that made?

A. Anywhere between three and four-thirty.

Q. Mr. Churchill, concerning your criminal record, had you been arrested previously on a federal violation that was dropped?

A. Yes.

Q. When was that?

A. That was at the Canadian border for smuggling.

Q. How long ago?

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Q. So part of the deal was if you could put Woodmansee in jail you would go free; isn't that correct?

A. That is not correct.

MR. NIEDERMEIER: Objection, Your Honor.

THE COURT: He has answered the question....let it stand.

MR. LINNAN: Some fifteen days after your last Court appearance, or the 15th of the month when you were at Mr. Woodmansee's house and supposedly overheard this conversation with him to somebody in New York; is that correct?

A.I did not supposedly overhear it. I overheard it.

Q. After that contact with him and the debriefing session that you have already testified to, did you discuss other checks other than traveler's checks with the police authorities?

A. Yes, I did.

Q. In fact, wasn't it your original job.....

MR. KILMARTIN: Your Honor, may we approach the bench?

(Bench conference)

MR. KILMARTIN: From my review of the transcripts the attempted impeachment by defendant DuBray will be prejudicial to Woodmansee, by bringing in matters collateral to the charges against him, and we would at this time either ask for a severance or an order preventing DuBray from inquiring further into these collateral

matters.

THE COURT: What is your offer in regard to this?

MR. LINNAN: I wish to offer the defendant, in his debriefing statement, was suddenly of an apologetic nature to the police that he hadn't obtained anything of value on that day about the other checks....presumably stolen social security checks and income tax return checks.

THE COURT: What does that have to do with this particular case?

MR. LINNAN: Throughout his debriefing he is constantly apologizing to them in an attempt to show that he is worried that his deal is going out the door, and I want to show they are putting pressure on him to produce something of a criminal nature, no matter what it is.

THE COURT: What does the United States say to this?

MR. NIEDERMEIER: Your Honor, the United States is put in a difficult position. It certainly would be prejudicial to Mr. Woodmansee but it did occur on that day...if it is contained in the debriefings, and I think counsel is entitled to bring it out.

MR. LINNAN: Shouldn't it be DuBray's defendant A rather than a Linnan on the markings.

CLERK: Yes.

MR. KILMARTIN: Your Honor, I think at the time the Government brought these charges and opposed our Motion for Severance they were aware of this inherent conflict, because this informant was working too, apparently from his testimony to have Woodmansee engage in other crimes, and it is the other crimes which are collateral and which are prejudicial to Mr. Woodmansee...but in all candor I must say are essential to the remaining defendants to demonstrate that this gentleman is not to be believed.

MR. LINNAN: I would like to add that prior bad acts of the witness, that the jury is entitled to hear his course of conduct.

MR. NIEDERMEIER: He can't be impeached by prior bad acts, Your Honor....that is irrelevant whether he has or not.

THE COURT: I agree with you as far as that is concerned at the present time there is possible prejudice as far as Mr. Woodmansee is concerned.

MR. O'NEILL: There is some case which I tried to find coming down out of the Second Circuit in the recent past, if my recollection is correct. It is one where other evidence of criminality came in during the furtherance of conspiracy and was not part of the conspiracy but was a criminal act. My recollection,

and I don't want to overstate my recollection of the deal...was in words to the effect as long as the criminal acts were a general part or related in some manner perhaps indirectly to the conspiracy, even if they didn't relate to the matters of conspiracy, they are admissible. I think a summation of Mr. Churchill is not going to show he is under pressure to produce... but rather he wasn't sure everybody believed him until he could come up with something tangible that he could do.

THE COURT: Let me see what we are talking about here.

MR. LINNAN: Each of the underlined statements with a P next to it...for pressure.

THE COURT: I am glad you understand what it stood for!

MR. LINNAN: There are several of them...if you go through the various pages.

THE COURT: Well, I want to spend a little time on this. I do not want to make a ruling. We will take a recess.

MR. AGEL: Your noon recess?

THE COURT: No, not my noon recess. That is an idea...we might take a noon recess and come back at one. I might indicate if for any reason I do sever here I would sever it as to Mr. Woodmansee and go forward with his case and not with the other defendants. I'm sure Mr. Kilmartin this comes as a surprise to you. Mr. O'Neill

I suggest you get back about 12:30 and if you have any cases I will discuss it with you.

(End of bench conference)

THE COURT: Ladies and gentlemen, this particular matter is going to take a little more time than anticipated, and since we are half an hour from the noon recess we will take it now and rather than recommence at 1:30 we will recommence at 1:00...so the Marshal will be able to take care of you during that period of time. We will take our noon recess and resume at one o'clock.

(Court recesses at 11:25 a.m., reconvening at 12:45 p.m.)

(Bench conference)

MR. LINNAN: In the absence of the jury, please note that Linnan A through D have been changed to DuBray A through D.

THE COURT: Mr. Agel isn't back yet, although the Court instruct[illegible] counsel to be back at 12:30, but he has not participated in the discussion at the bench in any event, and we can advise him as to what goes on here. Anybody have anything they wish to say in addition to what you said at the bench before the Court rules at this time.

MR. O'NEILL: We do have a few thoughts. Your Honor, our view, we feel the evidence could go in properly, or

if the Court's concern it be excluded and still not be prejudicial to DuBray. We are considering essentially, I understand, what is being referred to here as Mr. DuBray is seeking to bring out through counsel an indication Mr. Churchill had had discussions concerning Government checks with Mr. Woodmansee. The Government believes he could have, in its own direct case, brought that out.

THE COURT: Who could have?

MR. O'NEILL: The Government could have if we desired. We frankly did not do so in this case because we felt our evidence is very strong and there is no need getting into marginal areas when it is unnecessary. The reason we think it is admissible is the indication of first contact with Mr. Woodmansee is by the Government, so that we believe there is at least, if not a burden incumbent upon us to show Mr. Woodmansee was willing to deal or be connected in stolen property. Now whether we could have brought the earlier thing in with respect to the drugs, there was disagreement, but with respect to stolen government checks, very similar in character in terms of what they are, in terms of what is contained and involved here, we think it would be admissible and relative to see the intent of Mr. Woodmansee in dealing with Churchill, first of all.

Also, to show his intent in dealing with traveler's checks, knowledge and intent, and the facts in this indictment. We have a case, I do not really contend exactly like this, but United States vs. Nunez, which is found at 483Fed.2nd. 453. As I say, I am not trying to say all four, but in a general concept. If the Court feels, however, that this is unduly prejudicial to defendant Woodmansee, and I know there are some cases holding in Court in multiple defendant cases... there is always some prejudice but we believe the proper thing would be for the Court to take Mr. Churchill aside, outside the presence of the jury, and allow him to be questioned. We are not convinced that the responses are going to be such that they are going to be useful to defendant DuBray, or they can't be brought another way without covering specific areas. We feel it could be done either way.

THE COURT: Counsel for defendants wish to say anything?

MR. LINNAN: Just to repeat my original allegation. I think it is completely in my client's interest that the jury finds out what this Mr. Churchill was doing, and specifically that he was under the pressure from the Government agents to produce something, and this is brought out by his constant repeated statement about these other Government checks, when they weren't even

talking about those Government checks...they are talking about something unrelated and he would volunteer "honest, I am trying to get them". He was worried and I think the jury ought to know that.

THE COURT: The Court's ruling is going to be we are going to sustain the objection, Mr. Woodmansee's objection as we think the testimony concerning checks other than the ones involved in this case would be prejudicial to him, and we doubt that it would be prejudicial and we do not think it would be prejudicial to the other defendants, particularly because I think the other defendants can ask in general terms Mr. Churchill as to what he was supposed to be doing as far as Mr. Woodmansee is concerned. The impression the Court gets from what it has heard so far, even though it has not been directly testified to, Mr. Churchill was told to contact Mr. Woodmansee and determine whether or not he was engaged in any criminal activities, and if he was what he could discover concerning about it. I may be all wrong but I think it is proper to inquire of Mr. Churchill as to what his understanding was with the authorities, and I expect some of the authorities will be witnesses and you can cover the same area with them. I don't consider the present ruling, however, as I indicated, to be prejudicial to the defendants

other than defendant Woodmansee, and it might be prejudicial...so the objection is sustained, and I would suggest to the United States that they advise Mr. Churchill not to bring in any specific reference.... maybe you have already done this, but not to bring any specific reference to other checks or internal revenue.

MR. NIEDERMEIER: Checks, government checks, refund checks.

MR. KILMARTIN: Some of the damage is already done, Your Honor.

THE COURT: No, it has come in once before as I recall. At your request we struck any reference to it. I do not consider that prejudicial in the context in which it was covered before.

MR. LINNAN: I would for the record point out there is also testimony by Churchill at this time that there was reference made as to prior dealings by Mr. Woodmansee with some group in Rhode Island...this is in debriefing tapes. There is also some testimony about the previous checks.....these other checks.

THE COURT: What was the testimony with reference to the other checks...you mean at this particular time.

MR. LINNAN: Not testimony, the statement in the debriefing about previous dealings with people in Rhode

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Island, and previous checks, and I think it's incumbent upon me to point out to the jury if Mr. Woodmansee had an agreement to buy checks, he had an agreement to buy checks out of Rhode Island, which didn't involve my defendant. I don't know how I can get that information to the jury without referring to the checks.

THE COURT: Mr. Churchill has offered several times to advise the jury with reference to the Rhode Island reference which he made.

MR. KILMARTIN: Which we will be objecting to by standing on our head and screaming!

MR. AGEL: The credibility of Mr. Churchill is rather crucial in this case, and what Jim is getting at, together with what he has been saying, is that he can't effectively attack his credibility and criminal activities in other areas unless he gets into this.

THE COURT: Whose criminal activities in other areas?

MR. AGEL: Churchill's.

THE COURT: Why not, and what other activities?

MR. AGEL: Didn't he talk about the fifty reds...well, he did. We talked about them on direct.

MR. KUPERSMITH: He did and it was struck.

MR. LINNAN: It was struck and the jury was told to disregard it. He did mention reds.

MR. AGEL: He probably is dealing in other criminal

activity and I think that would affect his credibility as far as the jury is concerned. If we are prevented from doing that, Jim or anyone else is prevented in order to protect Bernard, that is the very reason we want the severance.

THE COURT: That may be a difficult matter because right at the present time I am just considering the objection on behalf of Bernard, and at this point at least nobody has moved for a severance.

MR. AGEL: Would you like me to do so at this time?

THE COURT: You can move....I can advise you that probably it won't be granted because I have gone over that same consideration and it seems to me again it is a discretionary call as a matter of judgment, based on the evidence, and whether or not there is prejudice to the other defendants. I have in mind and quite frankly how far we have come with the trial and the incident and the fact that it will be difficult to retry these defendants here...we will probably have to go to Brattleboro,and everyday control supervision and a host of other matters to consider. Basically, however, I am considering what will be a fair trial as to all defendants. I realize counsel for the defendants, DuBray, Hamlin and Reynolds may not agree with me, but it is my considered judgment that this is a proper way

to handle it, so if you wish to move for a severance at this time, you may.

MR. AGEL: Would you consider that I have so moved?

THE COURT: Yes.

MR. AGEL: Am I also to understand none of us can get into these areas if we desire?

THE COURT: Not specifically. You can get into them generally as to what he was doing and what he was looking for.

MR. AGEL: That is very prejudicial to Bernard and we will get an objection from Mr. Kilmartin on Bernard's behalf.

THE COURT: The arrangements that Churchill had with law enforcement officials, this isn't anything specific... this is what the arrangements were with law enforcement officials and I think it is proper.

MR. LINNAN: I think it is best to get this out of the way before we get the jury back, but as soon as I finish this line of questioning I want to get into the fact that if you were supposed to be there for checks what was he doing picking up reds every time he saw Bernard, and I think there were two occasions he picked up fifty reds and nobody really tells where those, the reds, went.

THE COURT: What bearing has that on the instant case?

MR. LINNAN: If he is popping pills during the time he is seeing Bernard....

MR. O'NEILL: Your Honor, they then went over to the State Police...if you think they are going to let the guy be debriefed, he received fifty reds and they not get them, assuming even the fact he received them....

MR. AGEL: Well, he was supposedly buying illegal checks...goes to his credibility.

THE COURT: Has he testified he was not taking any drugs during this period.

MR. LINNAN: Yes, he did testify to that, but his receiving supposedly or presumably illegal drugs from someone during testimony when that was not his job from the Government.

MR. O'NEILL: That is not true...that is not accurate at all.

THE COURT: You can ask him if he received any drugs during this period. You can clarify it...and that is far enough...not from Woodmansee, but whether or not he received any drugs during this period of time.

MR. KILMARTIN: And the officer is there...there is only one source.

THE COURT: At this time and at this juncture we rule on Mr. Kilmartin's objection and we have sustained the objection. Mr. Agel has moved for severance and that

is denied in the Court's discration, and at the present time we haven't heard from defendant Hamlin and DuBray as to whether or not they wish a severance?

MR. LINNAN: I would join in Mr. Agel's motion.

THE COURT: Your motion is denied.

MR. KUPERSMITH: I do too.

THE COURT: Mr. Kupersmith's motion is denied.

MR. LINNAN: If I could bring up something totally unrelated. During the recess we were given an opportunity to review the debriefing tape of the 15th, during which time a few words were on the tape which did not appear on the transcript, to the effect of "Christ, you guys got me all screwed up" which was said by Churchill to the officers in the midst of his discussion of what had gone on that day.

MR. KILMARTIN: Immediately before he identified Roy as a name.

MR. LINNAN: He couldn't remember the name and he said "Christ, you guys got me all screwed up" and with inflection.

THE COURT: Have you reviewed them all?

MR. LINNAN: We just had time to get through the 15th.

THE COURT: You have a long weekend in which to review the others.

MR. KILMARTIN: I do.

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MR. KUPERSMITH: Thank you, Your Honor. May it please the Court, ladies and gentlemen of the jury: Mr. Churchill, you testified that it was necessary for Mr. Woodmansee to instruct you on how to fill out the traveler's checks because you had never had any prior dealings with traveler's checks...is that accurate?

A. Yes, sir.

Q. Tell me, did you at the time know how to place a long distance telephone call?

A. Yes.

Q. Did you know how to place a long distance phone call from the State of Vermont to a telephone in another State?

A. Yes, I do.

Q. And perhaps if I just go through it quickly you can tell me if I am right...in order to do that,one must first dial the numeral one and then the area code, and then the telephone number...the exchange and number that one wishes to reach; is that correct...to your understanding of how it is done?

A. I guess it is, yes...you are right.

Q. Do you know how many separate numbers it is necessary to dial if one wishes to place a long distance telephone call from Vermont to another State?

A. Ten numbers, eleven.

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Q. Including the number 1, it is eleven. Now I think you testified that on May 15th that when you were at the house on Susie Wilson Road that Bernard Woodmansee requested Virginia to make a telephone call for him to someone in New York; is that correct?

A. That is correct.

Q. And in order to do that, if she had done that, it would be necessary for her to dial eleven digits, that would be correct, wouldn't it?

A. Yes, it would.

Q. Do you remember your testimony regarding this case before the grand jury?

A. Before the grand jury?

Q. Yes.

A. Yes, I do.

Q. And do you remember at that time Mr. Niedermeier, who was there, asking you how many digits Virginia Reynolds dialed on that day

A. I think you said this was before the grand jury.

Q. I mean at the grand jury, when you appeared at the grand jury?

A. I do not remember testifying to that number...any numbers.

Q. You don't remember testifying?

A. No, I don't.

(142)

Q. May we approach the bench briefly?

(Bench conference)

MR. KUPERSMITH: I apologize, Your Honor, but I don't think a clean copy of the grand jury testimony was given to us before and I should have asked for it. The only copy I could show to the witness to refresh his recollection is my own, which is marked. I am particularly concerned with pages 21, 22.

THE COURT: 21 and 22...are they marked?

MR. O'NEILL: Why don't you take the whole thing.

THE COURT: All right.

CLERK: Defendant Hamlin Exhibit A for identification is a transcript.

MR. KUPERSMITH: Mr. Churchill, I am going to give you a document which has been marked Defendant Hamlin's A for identification, and I ask you to examine that briefly and see if you can identify it, if you can... it will help to open it up and read it.

A. This is the grand jury testimony, isn't it?

Q. Are you able to identify it?

A. Yes.

Q. Now is that a copy of your grand jury testimony?

A. Yes.

Q. Have you had the opportunity to read this before today?

A. Yes, I have.

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Q. When was that?

A. Four days ago.

Q. Would you turn to page 21 please and just read to yourself, commencing with Line 10 the question and the answer... (deponent does so)....and does that refresh your recollection about what was said before the grand jury?

A. Yes, it does.

Q. And isn't it true that you told the grand jury when asked how many digits Virginia Reynolds dialed on May 15th, that you told the grand jury seven digits....yes or no?

A. I must have misread it, because I don't read it there...maybe I misread it.

Q. Why don't you look specifically at Line 13, Mr. Churchill...page 21...would the reporter repeat the last two questions?

REPORTER:"Q. Would you turn to page 21 please and just read to yourself, commencing with Line 10 the question and the answer....(deponent does so)....and does that refresh your recollection about what was said before the grand jury? A. Yes, it does. Q.And isn't it true that you told the grand jury when asked how many digits Virginia Reynolds dialed on May 15th, that you told the grand jury seven digits...yes or no?"

(1444)

A. You are right.

Q. And that was the call that was made to New York, according to your testimony; isn't that correct?

A. Yes, that is correct.

Q. And do you recall on May 15th, after leaving the house on Susie Wilson Road, what testimony you were provided by Trooper Ruggiero; is that correct?

A. That is correct.

Q. And do you remember Trooper Ruggiero asking the same question later...put to you by Mr. Niedermeier, namely how many digits were dialed....do you recall that?

A. Yes, I do.

Q. And do you recall how many digits you told Trooper Ruggiero at that time?

A. No, I don't.

Q. I believe this item has been marked by Mr. Linnan and I'm going to show you a document marked Defendant DuBray's Exhibit A for identification, and ask you if you can identify that?

A. Yes.

Q. And would you tell the jury what that is, please?

A. A transcript...it is what I told Officer Ruggiero after the meeting between me and Bernard Woodmansee on the 15th.

Q. And would you turn to the fourth page, please, and would

you read to yourself, commencing approximately five or six lines from the bottom. Now does that refresh your recollection about what you told Trooper Ruggiero regarding the number of digits that were dialed by Virginia Reynolds on that day?

A. Yes, it does.

Q. And how many did you tell him she had dialed?

A. More than seven.

Q. Would you mind reading that once again please, Mr. Churchill. Trooper Ruggiero said to you, does he not, "did she dial more than seven digits" and you repeat that in a question, there is a question mark at the end, more than seven digits, you asked him, and Trooper Ruggiero says yes.

A. Okay.

Q. And you say "no, I don't think so".

A. Yes, you are not....I was reading a couple of lines.

Q. Now that telephone conversation you heard that day, you only heard one side of it; is that correct? You only heard what Bernard Woodmansee was saying?

A. That is correct.

Q. Anything you know about that telephone conversation you know only because you heard it from Bernard Woodmansee; isn't that correct?

A. That is correct, I heard the conversation, yes.

Q. Now on that day when you were at the house on Susie Wilson Road would you say whether or not you were indoors at all times while you were there, excluding the time, of course, when you were directly entering and directly leaving?

A. I think I was in the house all that day.

Q. Do you recall perhaps helping Mr. Woodmansee with some sort of job?

A. Yes, that is right too.

Q. As a matter of fact you were outside helping him construct some sort of rabbit pen during part of that time; isn't that correct?

A. Yes.

Q. So you weren't outdoors the entire time, right?

A. Right.

Q. Okay, on the 21st of May you testified that you were present at the house on Susie Wilson Road at the time that Roy Hamlin and Jacky DuBray arrived, right?

A. That is correct.

Q. And can you tell us once again who else was present

A. Myself, Bernard Woodmansee, Virginia Reynolds, Roy and Jacky.

Q. Was anybody else there?

A. I think the older woman was there.

Q. The older woman, do you know her name?

A. Shirley, yes.

Q. Is it Shirley Bushey?

A. I don't know her last name.

Q. Do you know what her relationship is to any of the people you mentioned, if any?

A. No, I don't. I think she might be Virginia Reynolds' mother, but I don't know.

Q. I think you are correct.

MR. O'NEILL: Objection, Your Honor.....ask that to be stricken from the record....testimony of counsel.

THE COURT: All right we will sustain the objection. It can be stricken from the record and the jury will disregard it.

MR. KUPERSMITH: When Jack and Roy came into the house, did you notice Roy and Shirley relate to each other in any way or react to each other in any way.

A. They seemed to like each other.

Q. Did either of them do anything or say anything?

A. I think she might have asked him if he was going to take her out to supper.

Q. Excuse me?

A. She asked him if he was going to take her out to supper or not.

Q. Isn't it the case she actually went up to him and

Kissed him?

A. Maybe she did...I do not really remember.

Q. Do you recall being debriefed on that day?

A. Yes, I do.

Q. Okay, Mr. Churchill, I am showing you a document that has been marked Defendant DuBray's B for identification and ask you if you can identify that, please.

A. Yes.

Q. Would you turn to page 6, please, start reading after the large paragraph, halfway down. Now that is a statement you gave to Trooper Ruggiero?

A. Yes, it is.

Q. Being debriefed on May 23...does that refresh your recollection about what you said to Trooper Ruggiero on the 23rd?

A. Yes.

Q. Didn't you say at that time Shirley went up to Roy and gave him a kiss?

A. Yes, I did.

Q. Did Roy say anything to you at that time?

A. Not a word. Excuse me...he said hi.

Q. Now calling your attention to May 23, at the Stockyard Restaurant in Montpelier, I believe you said when you came in Mr. Woodmansee, Mr. DuBray and Mr. Hamlin were seated there together, and that they went with you to

the far end of the Lounge; is that accurate?

A. No, sir.

Q. Could you describe briefly what did happen when you went in the restaurant?

A. Bernard and Roy were standing by the window as I said yesterday, and then after they asked me where I had been we went into the back room.

Q. You went into the back room, all four of you?

A. No, Jacky was already in the room.

Q. Okay and is it accurate to say that on at least one end of this room there is a curtained off section?

A. Yes, it is.

Q. It was in that curtained off section you then went with Bernard Woodmansee?

A. Yes.

Q. And you left Mr. Hamlin and Mr. DuBray sitting separate and apart, and you went behind the curtain; is that right?

A. Yes.

Q. Do you recall testifying about this particular event or series of events at the Stockyard when you appeared before the grand jury?

A. Yes, I do.

Q. And do you recall testifying yesterday about the supposed conversation which occurred after you and Mr.

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Woodmansee had come out from behind the curtain... after you had done your business...yes or no. Do you recall testifying about that yesterday?

A. Yes, I do.

Q. Mr. Churchill, I would like to show you again Defendant Hamlin's A for identification please, and ask you if you can find anywhere in your testimony before the grand jury anything about that conversation which supposedly took place after you and Bernard Woodmansee came out from behind that curtain?

A. I do not recall being asked at the grand jury whether I had any conversation.

Q. Okay, let's refresh your recollection a little bit. Why don't you start reading down at the bottom of page 19 and up onto the top of page 20. Now I recognize down on the bottom of page 19, I think there is a reference to a bathroom, and I think you testified earlier today that that was a mistake, that it is actually supposed to read "back room"...is that correct?

A. Yes.

Q. But aside from that, aside from that error it reads "so we went into the back room. I handed him the bag containing thirty-nine hundred dollars and he handed me an envelope containing six thousand dollars worth

of traveler's checks, and we were supposed to meet in White River at the Hotel Coolidge to collect this, then Mr. Niedermeier says "then you left" and you said "then I left": Correct?

A. Correct.

Q. No conversation?

A. I wasn't asked about a conversation.

Q. Thank you...now you were asked and then you left, correct?

A. Yes.

Q. And so you said "and then I left" right?

A. Yes.

Q. Mr. Churchill, when you went into the Stockyard Restaurant you were wearing some sort of microphone or listening device, weren't you?

A. Yes, I was.

Q. And do you know what kind of apparatus that was?

A. What do you mean, apparatus?

Q. Well, could you describe what exactly it was?

A. It is a square box inside of a cigarette package... put it on your person then and the cord you tape to your body, goes down inside your pants, and they are supposed to be able to hear the conversation that goes on from a phone or something outside the present premises.

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A. Yes, it would have.

Q. But that was your beginning of your relationship as far as cooperation with the Government authorities, wasn't it?

A. Yes, it was.

Q. And wouldn't you say that was sort of crucial to the fact you are not in jail right now?

A. What do you mean, "crucial"?

Q. The fact you agreed to cooperate with the authorities is the reason you are in the Courthouse right now, isn't it?

MR. NIEDERMEIER: Objection, Your Honor.

THE COURT: I will sustain the objection.

MR. AGEL: Would you tell us, Mike, who it was that brought up the conversation about cooperation?

A. I did.

Q. Who did you bring it up to?

A. Anyone I could see.

Q. Why?

A. Because I wanted to cooperate.

Q. Is it because you wanted to cooperate really...is that really why?

A. Yes.

Q. Isn't it really because you wanted to save your own skin?

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A. I wouldn't put it in those words.

Q. You tell us how you would put it. I do not want to put words in your mouth. You tell us.

A. I wanted to cooperate.

Q. You wanted to cooperate about things that had happened in the past?

A. I wanted to cooperate in this. I know a lot of drug dealers and know other guys that...any other person that was breaking the law in any way.

Q. You had seen a light?

A. Yes, I seen a light.

Q. How did that happen, Mike...would you tell me?

A. Well, I think mainly because of the way it happened. I come very, very close I think to getting shot, and I didn't want to come that close again, and I did not want to ever have anything to do with any more drugs or nothing.

Q. Wouldn't it have been a fact that one of your major deals with the Government was to investigate drug related charges after that?

A. To investigate drug related charges...yes.

Q. But you said you didn't want to have anything to do with it. Did you have an option at that time of serving your time and salvaging the rest of it...the rest of your life...you had that opportunity,didn't you?

A. I can't remember, see, because I worked in the White River...I got them a lot of other drug cases. I can't remember when I started working in the Burlington area.

Q. Your best judgment is towards the end of April, though?

A. Yes.

Q. Who brought up the suggestion that you work in the Burlington area?

A. Excuse me?

Q. Who was it that suggested that you work with them or cooperate with them in the Burlington area?

A. Trooper Ruggiero.

Q. And do you recall where that conversation took place?

A. No, I don't.

Q. Do you recall the context of that conversation?

A. Context?

Q. Can you answer that yes or no?

A. No...just that I had a meeting with Bernard Woodmansee to see if he is violating the law in anyway.

Q. That is what I really wanted to know. What did you benefit, from your recollection of that deal, to come up here...was it primarily as you recall it for you to work with the State authorities against one individual in particular?

A. I really didn't say that, no.

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Q. Did they ask you particularly to get the goods on Bernard Woodmansee?

MR. KILMARTIN: Objection, Your Honor.

THE COURT: Sustained.

MR. AGEL: Did they ask you to get the goods on one particular individual?

MR. O'NEILL: Objection.

THE COURT: Sustained.

MR. AGEL: What did they tell you to do.

A. I just told you.

Q. Tell me again...I don't think I heard you.

A. They told me to have a meeting with Bernard Woodmansee, Bernard, to see if he was violating the law in anyway, and I did that.

Q. I want you to listen to my question carefully and answer this question yes or no if you can. Do you know the name Bernard Woodmansee?

A. Yes, I do.

Q. Had you met him before? Just answer yes or no.

A. Yes.

Q. May we approach the bench.

(Bench conference)

MR. AGEL: I would like to ask the next question.

THE COURT: Anybody object?

MR. KILMARTIN: Yes, I do.

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conversation.

MR. NIEDERMEIER: I simply....

THE COURT: Rephrase the question.

MR. KILMARTIN: First of all the Government has a duty to show, if true, to put this in as a statement of co-conspirators. This is not a conspirator...otherwise it is not admissible and the Court hasn't ruled....

THE COURT: The court is satisfied that this is a proper area, confined as it is to the dialing of the telephone and so on. Reframe your question.

(End of bench conference).

MR. NIEDERMEIER: When you arrived at the house on May 15th did Bernard Woodmansee say anything?

A. Told me to sit down, relax, and he asks the woman to call Roy.

Q. And what woman was that?

A. Dixie.

Q. What, if anything, did she do?

A. Picked up the phone, dialed a number and handed it to Bernard.

Q. Did you watch her dial the number?

A. No, I didn't really watch her dial it.

Q. Is it possible she could have dialed more than seven digits?

A. Yes, it is possible.

MR. AGEL: I think I did.

MR. LINMAN: Excuse me, Your Honor, I think it is prejudicial to my client. I didn't get into much myself, and I do not want to be bound what one of the other co-defendants gets into on cross. This is prejudicial.

(End of bench conference)

MR. NIEDERMEIER: Mr. Churchill, where were you when you heard the term Schenectady, New York?

A. The kitchen table.

Q. At what residence?

A. Susie Wilson Road in Essex Junction.

Q. Mr. Churchill, going to May 23, 1976 I believe you testified that you met Mr. Hamlin, Mr. DuBray, Mr. Woodmansee at the Stockyard Restaurant; is that right?

A. Yes, it is.

Q. And you also testified at the Federal grand jury; is that correct?

A. Yes, it is.

Q. I believe you were asked if at the Federal grand jury you stated the complete conversation that you had, that was had in your presence at the Stockyard Lounge; is that correct?

A. Yes.

Q. Now for what reason did you not give the complete con-

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versation at the grand jury that you have testified to today?

A. I wasn't asked a lot of it.

Q. Did you give that conversation in the debriefing that you had right after the meeting?

A. Yes, I did.

Q. When you met at the Stockyard Lounge what, if anything, did the person you referred to as Roy say to you?

A. He told me not to worry about it...that I had been late, an hour and a half late, and he said "don't worry about it" you know, and we went up to the back and sat down.

Q. While you were sitting there with him did he say anything else to you?

MR. KUPERSMITH: Objection.

(Bench conference)

THE COURT: What is your objection.

MR. KUPERSMITH: Repetition, Your Honor.

THE COURT: We will take the answer.

(End of bench conference)

A. He said that after this twenty thousand was gone that he could get fifty thousand more, and that me and my boys could go down to Albany...he felt we would like it down there, and we could do all fifty thousand...that he was getting more down there.

A. Yes, I did.

Q. Now I refer you to the last page of that same day, the page that you actually signed...towards the end of that page again. We are talking about who you were really talking about, and there I presume that is Mr Ruggiero says "the ones in Rhode Island or the ones in New York" and you responded "he didn't say. He said he had worked with them before."

A. That is correct.

Q. So when you were talking about traveler's checks you were talking about Rhode Island, isn't that a fact?

A. And New York.

Q. You were talking about Rhode Island too, correct?

A. Correct.

Q. I have nothing further at this time, Your Honor.

THE COURT: Mr. Kupersmith?

Recross-Examination by Michael Kupersmith, Esquire:

Q. Mr. Churchill, last week you testified regarding certain telephone conversations that you had with Mr. Woodmansee back in May of this year, and I believe you testified and you can correct me if I'm wrong, that you knew if those tape recordings which we heard here in Court were the original of your recordings, because you heard word for word what those conversations were; is that correct?

A. Yes, it is.

Q. Okay now you also testified that you have read all the transcripts of the debriefings that you went through from time to time back in May, which we discussed here in Court; that is correct, isn't it?

A. Yes, it is.

Q. Have you also listened to the tape recordings of those debriefings?

A. No, I haven't.

Q. I would like to call your attention to the transcript of the debriefings on May 15th. I believe that has been marked as DuBray's A for identification...yes, can you tell us...let's just take the first page. Can you tell us now from looking at that whether that is word for word the same as you went through on your debriefing with the State Police on that day back in May?

A. Yes, it is.

Q. You are absolutely sure of that?

A. Yes, I am.

Q. Let me call your attention to two-thirds of the way down the page. Specifically the line that reads: "So he called a guy named Roy in New York and orders a certain amount of travelers checks, twenty thousand dollars worth of traveler's checks". Now specifically referring to that line, is that transcript exactly the way that you talked to the State Police back on May 15th?

A. Yes, it is.
Q. And you are absolutely a hundred percent sure of that?
A. Yes, I am.
Q. Do you recall injecting something that is not transcribed on that, specifically before the word "Roy" something to the effect "Jesus Christ, you guys have got me all screwed up"?
A. Yes, I do.
Q. You do recall that?
A. Yes.
Q. So that if it were properly transcribed it would read "so he called a guy named...Jesus Christ, you guys have got me all screwed up...Roy in New York, and ordered twenty thousand dollars worth of traveler's checks" isn't that the way that should really read if it were properly transcribed?
A. I guess so.
Q. You know so, isn't that right?
A. Yes.
Q. And, in fact, this is the first time you have mentioned to anybody at anytime right here on the first page that Mr. Woodmansee supposedly talked to somebody named Roy in New York; isn't that accurate?
A. Yes, it is.
Q. Now somewhere back along the line you testified that you

were arrested by the members of the Vermont State Police in conjunction with the sale of drugs. It was sometime back in March of this year, I believe, isn't that right?

A. Yes, it is.

Q. And at that particular point in time you testified that that was the time you decided to cooperate?

A. Yes, it was.

Q. Could you tell us something about exactly how that came about?

A. What do you mean, exactly how it come about.

Q. You were sitting in this parking lot in your automobile and a number of troopers apparently surprised you. Can you tell us who said what, and to whom, in order that it became known to the police that you were going to cooperate?

A. That was later on at the barracks.

Q. It was at the barracks that you decided to cooperate?

A. Yes.

Q. Tell us how it came about at the barracks. First of all, who was present?

A. There was Trooper Ruggiero, a George Bertram, a Ted Mandoga, the DA.

Q. How did you make your cooperation known. Did they ask you something, did you volunteer it, tell us about it?

A. I told them I would cooperate to my fullest extent

if they could have some consideration, knowing that I had a bad record in the past, and I told them that I would cooperate to my fullest extent, assist them in all drug cases and anybody violating the law in anyway if I could have just a little consideration when it come time for me to go to Court.

Q. Why did you decide you wanted to cooperate at that time?

A. Just decid d that I did.

Q. You just decided...you used the term I think that you "had seen the light"; isn't that accurate?

A. Yes, it is.

Q. Isn't the fact of the matter you simply wanted to stay out of jail?

A. I just wanted some consideration.

Q. And that consideration was that you wanted to stay out of jail?

A. Yes, you can say that.

Q. What would you say your mental condition was at the time? Do you think you were clear headed?

A. I would say I was clear headed, yes.

Q. But not so clear headed that you couldn't remember what date it was; isn't that true?

A. Well, it was a long time ago.

Q. Did you agree with, I believe Mr. Agel, this was the most important date in your life, or sometime before or since

but you couldn't remember that particular date?

A. Right.

Q. So what you told the police in effect is that you would do anything that they wanted you to; that they wanted you to do in terms of cooperation, and you were looking for consideration, and in your mind that consideration was that you wanted to stay out of jail?

A. I did not say I would do anything they wanted me to, no.

Q. You said you would cooperate to the fullest extent possible?

A. That's right.

Q. And what you had in your mind was you wanted to stay out of jail?

A.Yes, that is correct.

Q. I think the term you used on Friday afternoon was that you had suddenly "seen the light" was that it?

A. Yes.

Q. Was that the term you used? What did you mean by that?

A. What I mean is that this was not going to get involved in any more criminal activities.

Q. You weren't going to get involved in any more criminal activities. What was the date of that?

A. I don't know the date.

Q. Sometime in March, wasn't it?

(165)

A. Yes.

Q. March 12th?

A. I don't know the date. It was in March, yes.

Q. Isn't it a fact...Your Honor, may we approach the bench?

(Bench conference)

MR. KUPERSMITH: We have had some discussion about this, Your Honor, and I felt it was only fair to appraise the Court and the U.S. Attorney and the U.S. Government I wanted to tackle...I think we have reached a point, Mr. Churchill advised as of mid-March, 1976 he had decided he was not going to get involved in any more criminal activities, and I want to ask him about his arrest, a conviction for resisting arrest in April of '76, for purposes of impeachability.

MR. NIEDERMEIER: My objection, as discussed earlier, it is important and he couldn't be impeached on the basis of a conviction for a misdemeanor, except if it is for dishonesty, false statement,...this is not the case in this circumstance. In addition, Mr. Churchill did not say he did not become involve...he said he didn't want to become involved in any criminal activity.

MR. KUPERSMITH: I think this goes to his credibility right here and now on the stand. He has led the jury to believe as of mid-March he was going to lead a pristine life, was not going to get involved in any more

criminal activity. That is not the case. It is no longer relevant whether it is a felony or not...the question is was there violation of law...was he convicted of it.

MR. NIEDERMEIER: The witness cannot be impeached on the basis of a bad check...we are talking about a criminal conviction that is a misdemeanor. The Rule specifically states a witness can only be impeached for a misdemeanor if it goes to dishonesty or false statement. We know this is not the case and he cannot be impeached on that basis.

MR. KUPERSMITH: He is making a false statement on the stand.

MR. O'NEILL: He most certainly is not.

THE COURT: I think the language of Rule 608 is very clear and it says specific instances of the conduct of a witness for the purpose of checking credibility, other than conviction of crimes, proved under Rule 1009, can't be proved by extrinsic evidence.

MR. KUPERSMITH: This is not extrinsic evidence.

THE COURT: Well, it basically is. You are asking him questions that you would expect to prove by showing in effect that he, in fact, if he denied it, if he in fact had been convicted, you would want to bring in proof of that fact.

MR. KUPERSMITH: If he denied it I expect the United States Attorney would prosecute for perjury, but I would like to ask him, and I have to be satisfied with his answer. If he admits it I have got the information I want. If he doesn't admit it I expect he would be perjured...

MR. O'NEILL: That doesn't mean he can be asked about anything nevertheless...still subject to limitations within the Rules.

MR. NIDERMEIER: I think the Rules specify on the first two matters...is a matter which can be proved, not conclusively by contra evidence.

MR. KUPERSMITH: We are not talking about impeaching generally, but as to that specific answer, and I believe that if it is not a false answer then he has misled the jury.

THE COURT: I am not sure that is true, Mr. Kupersmith. I do not think he has indicated, other than the fact that what he expected and wanted to do at the time he agreed to cooperate, whether, in fact, he did this is another question. Well, I am going to sustain the objection... otherwise his frame of mind at the time he made the statement, the fact he went out got into more difficulty apparently as far as I am concerned he still stands responsive to the question as posed.

MR. KUPERSMITH: Could I ask him in general whether he lived up to his expectation or got into other criminal activity?

MR. O'NEILL: What is the relevance of that...we couldn't ask him the question.

MR. KUPERSMITH: We are not the Government...we are the defendant.

MR. O'NEILL: That is exactly right...doing the same thing by a different door, that's all.

THE COURT: I am going to sustain the objection. To be quite frank I think it is a difficult area to pass on the Rule, but based on testimony I will sustain the objection.

MR. KUPERSMITH: May we have the usual exception?

THE COURT: Yes, the rule maybe more stringent than I personally would care to apply, but I think I am applying it as the case in text contempla es, if I am wrong I am sure you know how to take steps.

MR. KILMARTIN: It really goes in my mind to bias, because it becomes that more necessary for him at this stage of the proceedings...if you care to cooperate, having been arrested once, and you are not sure about a second arrest, the time for the aggravated assault on the girl, won't say conviction, but now if he doesn't up his ante the Government would find themselves in a

very insecure position in his mind after that aggravated assault charge came up...he had to produce even more to stay out of jail.

MR. O'NEILL: There is no evidence to substantiate that.

THE COURT: Overruled.

MR. KUPERSMITH: Let me call your attention, Mr. Churchill, to May 21, and you apparently were at the house on Susie Wilson Road, and you testified that Mr. Hamlin and Mr. DuBray arrived. Could you tell us once again where you were when they arrived?

A. Sitting at the kitchen table.

Q. And that is again right next to the door, right next to the entryway, right?

A. Yes.

Q. Who else was present?

A. Bernard Woodmansee, Shirley and Dixie.

Q. And I think that you testified when I questioned you earlier that when Mr. Hamlin and Mr. DuBray came in that Mr. Hamlin and Shirley did some visiting together essentially.

A. Yes.

Q. Could you tell us where they went at that point?

A. They didn't go anywhere.

Q. Are you sure of that?

A. Yes, I am.

Q. Might they have gone to the other side of the bar into that little alcove?

A. They might.

Q. They might have?

A. Yes.

Q. So you are not really sure where they were?

A. They were right in my sight.

Q. That might have been on the other side of the bar there?

A. Might have been.

Q. In fact, they were chatting together among themselves, weren't they?

A. Yes.

Q. Now there has already been additional conversation, additional questions about the telephone call that was made on May 15th. You testified on Friday that on two prior occasions you were told, both the grand jury and the police who debriefed you, that Virginia Reynolds dialed only seven digits; is that accurate?

A. That is what I said.

Q. But you stated here today that you weren't quite certain about that?

A. Yes, I did.

Q. Could you please look at defendant DuBray's B, I believe for identification...no, I am sorry, look at A, read the bottom of page 4 and the top of page 5 to yourself

please. Have you read it?

A. Yes.

Q. Now at that time you told the police, did you not, that you felt that you only had been told that the call was made to New York and you had been told it was made to New York in order to throw you off. Isn't that what you said there?

A. That is what I recollected, yes.

Q. Mr. Churchill, you went through a number of debriefings that we have talked about. Was there an FBI agent at each of these debriefings?

A. Not all of them, no.

Q. Whichever, which ones there were agents at and which ones they weren't at.

A. No, I don't...this is up to the last part of it when I received the traveler's checks. That is when the agent started listening to the debriefings.

Q. That was the only one you can recall an agent being at?

A. On the 21st and 23rd.

Q. On the 21st and on the 23rd?

A. Yes.

Q. How about the 15th; was there an FBI agent?

A. Not that I can recall, but there might have been.

Q. Were you working for the FBI at all during that earlier period of time before the 21st?

A. Yes, I was working with both State Police and the FBI.

Q. In this same matter?

A. Yes.

Q. Just one more matter. Earlier I asked you about your grand jury testimony, specifically with reference to a question that might or might not have taken place at the Stockyard Restaurant, and I asked you to look at your grand jury testimony which has been marked defendant Hamlin's A for identification, and I asked you whether there was any mention in there about a conversation between you and Mr. Hamlin at the Stockyard Restaurant, and you said that there wasn't. That is correct, isn't it?

A. Right.

Q. And you said this morning in response to Mr. Niedermeier's question that you weren't asked?

A. Correct.

Q. Is that accurate? Can you look again on page 19 and 20 ...just read that over. Have you read it now, on the botton of page 19,top of page 20...you described the exchange of money and traveler's checks between yourself and Bernard Woodmansee, correct?

A. Right.

Q. And the question on line 5 is "and then you left" right, and you respond?

A. "Then I left".

Q. Now could you not at that point have said "no we had a conversation"?

A. Not unless I was asked.

Q. Not unless you were asked?

A. Um Um

Q. You were asked if you were lying, right?

A. Against the grand jury?

Q. Wait a minute, yes or no?

A. Repeat the question.

(The last question is repeated)

Q. You were asked and then you left. Is that the question ...now if there had been a conversation you might have said "no, there was a conversation"?

A. I could have said that, yes.

Q. Fine, thank you. No further questions at this time, Your Honor.

THE COURT: Mr. Agel.

MR. AGEL: Nothing further, Your Honor.

THE COURT: Mr. Niedermeier?

Recross-Examination by Jerome Niedermeier, Esquire:

Q. Briefly, Your Honor. Mr. Churchill, you were asked I believe by counsel for Mr. Woodmansee earlier concerning what you understood about any recommendation that would be made to you based on the quality and persua-

A. Yes.

Q. Let's just finish that, see where I am...where you were reading. You left off "I believe in New York" when you were reading for Mr. Niedermeier, didn't you. I believe it is on page 5...it is seven.

A. Yes.

Q. You just read that right, and you said "I think it was seven because she went zip, zip, zip" and you stated "in New York" when Mr. Niedermeier was questioning you, right. Let's just finish that trend of thought as the transcript continues. Would you continue reading there until we just finish the next three or four sentences.

A. "Supposedly could be New York, but just might be something to throw me off...but you think that there is only about seven? ...Like a normal call, I would call, like if you would call from Burlington to White River."

Q. That is enough.

THE COURT: Mr. Kupersmith?

MR. KUPERSMITH: Mr. Churchill, in response to Mr. Niedermeier's question a minute or two ago you stated I believe that you received, you injected something like "Jesus Christ you guys are trying to screw me up" was because there were too many questions being thrown at you?

A. That's right.

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Q. What were those questions?

A. Just when they got two State Police officers.

Q. What were the questions?

A. I do not remember exactly what the questions were.

Q. Do they appear on the transcript?

A. Yes, they do.

Q. Point them out to me, please?

A. Which one do you want me to look at.

Q. I believe DuBray's A for identification. Right on the first page where you were reading before?

A. You will have to point that out to me.

Q. Well this is the line in which the omitted injection appeared, correct?

A. Yes.

Q. I am pointing to it?

A. Yes.

Q. Now where are all the questions on this transcript that were confusing you at that point?

A. I don't know.

Q. They don't appear there, do they?

A. No, they don't.

Q. Were you under oath at any of these debriefings?

A. Yes, I was.

Q. You raised your hand and swore to tell the whole truth and nothing but the truth?

(The next witness enters the Courtroom and takes the stand)

THE CLERK: Would you state your full name?

A. Mary Foster.

(Ms. Foster is duly sworn by the Clerk)

Examination by Jerome O'Neill, Esquire:

Q Could we have your name, please?

A. My name is Mary Foster.

Q Would you tell us how you are employed?

A. By the General Electric Company at Schenectedy, New York.

Q What is your connection there at the G.E. facility?

A. Accounting, clerk, typist.

Q How long have you held that position?

A. Eight years.

Q Would you basically indicate to us what your duties are in that position you have just described.

A. I do typing, filing, and sell Bank of America Travelers Checks.

Q With respect to the sale of Bank of America Travelers Checks would you indicate to us how you go about the sales, what the mechanics are of that particular part of your job?

A. As the individual comes in to buy the checks, either with the cash advance received, or a personal check I, in turn, hand them over the money .....

Q ----- Slow down a little bit. How do you officially yourself receive the checks?

A. I get them from the vault, from my supervisor, Mrs Yokueytis.

Q And once you receive the travelers checks from Mrs. Yokueytis do you have some recording system you use?

A. I do. I have a register book I log them in, and as people come in I log them back out.

Q I show you what is marked exhibits 6 and 7 for identification, and ask if you can identify those, please.

A. They are my sales and control registers.

Q These are the books you use in connection with the duties you described?

A. Right.

Q Are those records, 6 and 7 for identification, are they maintained in the regular course of business?

A. Yes.

Q And is it in the regular course of business to maintain records?

A. Yes.

Q Did you make the entries in those records relating to the receipt of the checks from Mrs Yokueytis, or the sale to individuals?

A. Yes, I do.

Q Your Honor, at this time I move admission of Government's

6 and 7 for identification. If the Court and counsel please, I could ask two or three questions before I need to make reference.

THE COURT: Unless somebody objects, why don't you.

MR. O'NEILL: Mrs Foster, I think you indicated you have travelers checks --- directing your attention to May 7, 1976, at that point in time what type of container did you use to keep the travelers checks in?

A. They were in a two drawer locked file cabinet next to my desk.

Q How heavy a file cabinet?

A. It is quite a considerable size. Maybe two people, something like that could lift it, but it isn't something readily moveable.

Q Would it be fair to describe something you yourself couldn't move?

A. Definitely, right.

Q What kind of lock system was there?

A. Just a lock that you push in and, you know, you just put the key in to open it up.

Q To the best of your knowledge who had keys for this?

A. I did and Mrs. Yokueytis.

Q Directing your attention to May 7, 1976, were you working on that particular day?

A. Yes, I was.

Q Was this a Friday?

A. Yes.

Q And again, where is the plant that you work in located?

A. Schenectady, New York.

Q Did you have any travelers checks on that particular day?

A. Yes, we did.

Q As of the close of business on that day --- what time did you finish work?

A. Five o'clock.

Q On that evening how much did you have, total value, in travelers checks within the filing cabinet?

A. Twenty one-four.

Q Now does anyone other than yourself have the authority to take the travelers checks out of the file cabinet?

A. No.

Q Did you work over the course of the weekend?

A. No.

Q Did you give anyone the authorization to remove any travelers checks or open that file cabinet over the weekend?

A. No, I didn't.

Q Directing your attention to May 10, the following Monday, were you working on that particular day?

A. Yes, I was.

Q Did you have occasion to open the file cabinet on that day?

A. Yes, I did.

Q About what time did you open it?

A. It was between 8:30 and 9 o'clock.

Q When you opened it how would you describe the condition of the inside of the filing cabinet? Appear about average in terms of what was there?

A. Some of the travelers checks were missing -- when the first person came in to buy them I noticed.

Q Did you make a count of how much was in the file cabinet at that point in time?

A. Yes.

Q What was in there when you checked it?

A. When I checked it there was a thousand four hundred left.

Q Based upon twenty-one thousand four being there, that would mean exactly twenty thousand was missing?

A. Yes.

Q I do need the exhibits.

THE COURT: Any objection to Government's 6 and 7? I take it by your silence there is no objection, so Government's 6 and 7 are admitted.

MR. O'NEILL:

Q Mrs Foster, Government's 6 and 7, do these cover

particular periods of time?

A. Yes, they do.

Q First of all, with respect to Government's Exhibit 6, would you tell us what period of time that covers?

A. It covers from April 23 through May 6.

Q And Government's exhibit 7, tell us what that covers.

A. From May 6 through May 18.

Q First of all, looking at Government's exhibit number 6, in terms of form, are these maintained the same way?

A. Yes.

Q Looking at exhibit 6, going through the columns, indicate to us basically how you use each colum --- start on the far left.

A. First I mark down the day, the person's name who is purchasing the checks, the serial numbers, and however much amount of money in a certain denomination, column.

Q Is it fair to describe this as having columns across the top, and when somebody purchases you mark the amount of purchase in that column?

A. Right.

Q When you receive travelers checks how do you mark them in this book?

A. I use the day, put down "received" and use the last three digits of the first check, through the last three digets of the bunch, of the checks that I get.

Q I show you what is marked here Government's exhibit 7, in reference, going to roughly the seventh page, are there some red lines within the book?

A. Yes, there are.

Q Would you indicate the significance of this, please?

A. These are the checks that we have that were stolen.

Q Did you yourself arrive at these particular figures?

A. No, I did not.

Q Where did you get the figures to put in there?

A. From Mrs Yokueytis.

Q She provided you with the figures and you then recorded them?

A. Yes.

Q At my request have you gone through Government's Exhibit 6 and check marked off in there where you received travelers checks which were later listed among those stolen?

A. Yes.

Q Flip through and give any one of them, in terms of numbers and the date, please.

A. For instance, here on 5/5, I received like a thousand dollars worth of the 10 times 10 denomination, and here are the serial numbers.

Q Those are the last three digits, 510 through 609?

A. Right.

Q Your check-off indicates those were some of the ones that were taken?

A. Right.

Q Mrs Foster, showing you what are marked here for identification as exhibits 4 and 5, would it be fair to characterize those as travelers checks that look similar to the type you deal in?

A. Yes, they are.

Q Is there anything about these in terms of color, anything like that, that differs from the type you deal in?

A. No, they are the same except the discoloration on them. They are our checks.

Q That is all we have of this witness, Your Honor.

Cross-examination by Duncan Kilmartin, Esquire:

Q Mrs Foster, how large is the room in which this cabinet is kept?

A. It is a small office. I couldn't really begin to tell you the exact size, but it isn't a big office. It is a smaller office.

Q Are there two of you that work in there?

A. No, seven of us.

Q There are seven, and only you and Mrs Yokueytis have access, according to your best knowledge, to this particular cabinet?

A. Yes.

Q Are there any other pay duties conducted from this room to other employees of G.E? In other words, is there any money disbursed in any other way, other than the employee coming in and either purchasing travelers checks with cash, or paying you with a cash advance receipt, I think you called it. Any other form of disbursement?

A. No, just the travelers checks.

Q This is the only money exchange?

A. Right.

Q There are two ways you described for someone to obtain travelers checks from you or Mrs Yokueytis?

A. Yes.

Q An employee would come in with cash?

A. No, not cash. It would have to be a personal check if they are buying them for personal use, or if it is one of our engineers using them for a field assignment direct, it would be a cash advance.

Q And these are the only two ways you ever distribute travelers checks?

A. Yes.

Q Is your function in this department, insofar as they relate to travelers checks, interchangeable with Mrs. Yokueytis, or is she your superior?

A. She is my superior.

Q On the morning when you claim to have found the checks missing, did you personally discover the checks missing, or did someone bring it to your attention?

A. No, I did.

Q You were the first one to go to the file cabinet?

A. Yes.

Q Was there anything about the file cabinet itself which brought your attention to the missing checks, or did you have to go inside to find out they were missing?

A. Yes, we did. It wasn't until the first person came and I opened up to sell them. Up to this point we hadn't noticed anything.

Q After you discovered it was there anything you could observe on the face of the cabinet which indicated the cabinet was in a different condition than you left it on Friday?

A. No, there wasn't.

Q In other words that locking tumbler or mechanism on the side was still pushed in?

A. Right.

Q And you had to put your key in, turn it, and slide it out?

A. Right.

Q I ask you to look at this table, and look at each person here and tell me if any person that you recognize at

this table is an employee that you have ever seen at GE?

A. No.

Q Now the room in which you work, does it connect with other rooms?

A. No, we are separate, by ourselves.

Q Is there one door in?

A. There is two.

Q There are two. Are they locked on the weekends?

A. No.

Q So the only thing which prevents anyone from having access to this particular cabinet is the lock on the cabinet?

A. Right.

Q Is your function and Mrs Yokueytis' function in terms of distributing travelers checks well known throughout the employees of your plant?

A. Yes.

Q Is it advertised in any manner in any house paper or journal?

A. No.

Q It is something you would have to be an employee to know?

A. Right.

Q I do not have any further questions.

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THE COURT: Mr. Linnan?

MR. LINNAN: I have nothing of this witness.

THE COURT: Mr. Kupersmith?

MR. KUPERSMITH: No questions, your Honor.

THE COURT: Mr. Agel?

CROSS-EXAMINATION BY SAUL LEE AGEL, ESQUIRE:

Q Mrs Foster, where do you leave the key?

A. The key is kept locked in my desk. We do not carry it with us. We keep it in our desk, which is locked.

Q When you returned on Monday was that desk disturbed?

A. No, no. It was still locked.

Q You must be telling me, therefore, that somebody has got a key to get into your desk?

A. Well, yes. I have the one key. Mrs. Yokueytis has another key, and her manager, her superior has a third key.

Q And were any of those keys missing?

A. No.

Q Do you know how anyone got into your desk?

A. No, I do not.

Q Do you know whether or not you locked your desk, or even closed your desk on Friday?

A. Yes, they make it a pretty strict rule on desks having to be locked.

Q I do not want to know what they make a rule, but I

want to know what you did.

A. Yes, I did.

Q I do not want you to tell us what normally you do. Do you recall whether or not you locked your desk on Friday? Were you anxious to leave or something on Friday and inadvertently left your desk drawer open?

A. I could have but it would have almost been impossible.

Q What I want to know is, do you remember what you did?

A. No, I do not remember exactly, no.

Q Assuming that you had locked your desk drawer, where would you have put the key?

A. The key to my desk stays with me.

Q So that you took it with you when you left the plant on Friday?

A. Yes.

Q Did you have that with you when you returned on Monday?

A. Yes, I did.

Q No forced entry into your desk that you could observe?

A. No.

Q Any forced entry into the filing cabinets where you kept the checks?

A. No.

Q Who was it that opened those on Monday?

A. The file cabinet?

Q Yes, Mmm-Mmm.

A. I did -- when the first person came to purchase the checks that morning.

Q Did you open the drawer or take the key and unlock the doohickey on the side?

A. No, I unlocked it first. It was locked.

Q It was?

A. Yes.

Q In order to lock it, if it had once been opened, all you did or do is take your thumb and push it and close it?

A. Yes.

Q You do not have to have a key to open it?

A. You have to have the key to open it.

Q I do not mean that. I mean, if it is left open by you by mistake?

A. Mmm-Mmmm (indicating yes)

Q I don't even need a key to get in?

A. Right, right.

Q Now do you recall whether or not you locked that that Friday?

A. I think I did. You know, I can't remember that far back exactly if I did, but I am pretty sure I did.

Q My question is, can you tell this Court and this Jury that you recall locking it, or could you have left it open?

A. Once again, you know, I am pretty sure I did lock it, but, you know, I do not really remember that far back to say positively that I did.

Q Would it have been your duty and responsibility to lock it before you left?

A. Yes.

Q It would have been -- or Mrs. Yokueytis, she wouldn't have done it?

A. No.

Q So whether it was done or wasn't done, was your responsibility?

A. Yes.

Q Did you have a tally on Friday as to what was in that drawer?

A. Yes, we did.

Q Did it show on the documents Mr. O'Neill asked you to look at?

A. Yes.

Q It does. Thank you.

MR. KILMARTIN: May we approach the bench?

(Bench conference)

MR. KILMARTIN: Your Honor, I do have some more questions I want to ask her. As soon as I sat down I remembered them. I would like an opportunity to continue my cross.

THE COURT: You mean before Mr. O'Neill?

MR. KILMARTIN: I think it was really a continuation of what I started before.

THE COURT: Okay, we will take a recess and let you come back.

(End of Bench conference)

THE COURT: Ladies and Gentlemen; we will take our afternoon recess at this time.

(Recess at 2:30 p.m. reconvening 2:45 p.m.)
(Bench conference)

THE COURT:

At this time I would state for the record that I am satisfied by a fair preponderance of the evidence independent of the statements to which Mr. Churchill testified which defendants' counsel have characterized as hearsay, as to the existence of a joint criminal undertaking or conspiracy involving the defendants here on trial. In other words, I am satisfied that the United States has come forward with evidence independent of those statements which supports the existence of a criminal conspiracy by a fair preponderance of the evidence. Accordingly, I am satisfied that those statements offered against the defendants to which counsel earlier objected were made during the course and in furtherance of a conspiracy and for that reason are not hearsay and are properly admissible

in accordance with the provisions of Rule 801 (d) (2) (E) of the Federal Rules of Evidence. I am aware that the Government has not concluded its case as yet, and there is other evidence and the testimony of other witnesses yet to come. I am also aware that the defendants will undoubtedly cross examine the witnesses and carefully scrutinize any additional evidence other than testimony. Should anything occur during the balance of the Government's case which causes me to change the opinion which I have just stated, I shall do so and promptly advise the parties. In Advising the parties of my determination as to the admissibility of the statements, I am assuming, unless advised to the contrary, that each defendant objects to such determination even though I have reached such a determination independent of a motion to strike such statements as previously discussed. My determination is also made subject to the right of the defendants to move to strike the statement at any future time during the course of the trial if they believe the circumstances have changed sufficiently to warrant such a motion.

(End of bench conference)

THE COURT: Mr. Kilmartin, you have some additional questions?

MR. KILMARTIN: Yes, a couple of questions, Your Honor, thank you.

Cross-Examination by Duncan Kilmartin, Esquire:

Q Mrs Foster, I think you indicated your chain of command was yourself, and would you pronounce it again?

A. Mrs Yokueytis.

Q And then someone above her?

A. Right.

Q Who is it that is above her?

A. His name is Mr. Richard Summer.

Q What is his function?

A. He is the manager of accounting and audits in our department there.

Q Is this the accounting and auditing department for the entire plant?

A. No, just for one business division.

Q Approximately how many employees would be in that division?

A. Okay, including the engineers and, you know, the office people and all, total, it probably would be close to five, six thousand people.

Q Who is it that has the final say as to whether your department will even carry travelers checks for the benefit of the employees?

A. It would be Mr. Summer.

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MR. ONEILL:

Q Mrs Foster, over the course of the particular weekend, between Friday and the Monday, stating the obvious, did you loan anyone either of the two keys that have been referred to?

A. No, I did not.

Q Was there anyone authorized to go into your desk?

A. No.

Q Were the checks the property of General Electric Company?

A. Yes.

Q That's all we have, Your Honor.

THE COURT: Any further examination?

MR. KILMARTIN: Nothing, Your Honor.

MR. LINNAN: None, Your Honor.

MR. KUPERSMITH: Nothing, Your Honor.

MR. AGEL: None, Your Honor.

THE COURT: All right Mrs. Foster, you may step down.

(The witness leaves the stand, and the next witness enters the room)

THE CLERK: Would you state your name.

A. Cathryn Yokuvytis.

Q Would you raise your right hand.

(The witness is duly sworn by the Clerk)

Direction Examination by Jerome O'Neill, Esquire:

Q Could we have your name, please?

A. Cathryn Yokuvytis.

Q Speak directly into the microphone.

A. Cathryn Yokuvytis.

them ... I took their order at the bar and I brought it up into the cocktail lounge, Sidecar, and I checked on them several times to see if they wanted something else, but I only served them maybe twice after that, but I did check on them a couple of times besides that.

Q Would it be approximately four times you had talked with them after the bar?

A. At least.

Q Now was there a point in time when the three individuals who came in were joined by a fourth individual?

A. Yes.

Q And approximately how long after the three men had come in did the fourth individual join them?

A. Approximately about three hours I think.

Q And where did he go when he came in, this fourth individual?

A. He came directly into the bar. I was in the bar at the time. He came in and I think one of them met him in the hallway, and they went directly up the stairs into the lounge.

Q When the fourth individual came in can you give us a description as to what he was wearing, what he looked like, anything you remember?

A. He was rather a short stocky man. I believe had a black beard and a wide-rimmed hat and plaid jacket.

Q What type of hat?

A. Cowboy-like.

Q Wide brim?

A. Yes, doughish color.

Q Do you remember which one of the men met him?

A. I wouldn't be certain ... I do not think he met him in the front. I think he met him in the hall. I am sure one of the men was downstairs.

Q Did you hear anything said between the fourth individual and the individual that met with that individual downstairs?

A. Not when he came in, no.

Q Was there a point in time when you did hear somebody say something?

A. When I went up to see if this man wanted to have something, one man said 'it's about time you got here'. He said some name, somebody was getting nervous, and the fourth man said 'what do you mean, getting nervous, I have been waiting out in the parking lot for an hour and a half'.

Q Did you overhear any conversation other than ... in relation to persons while you were working there that day?

A. No, I just went right downstairs.

Q Was there a point in time when the fourth individual

left the lounge after he came in?

A. Very soon, yes.

Q Approximately how long after he first came in?

A. I wouldn't think he was there less than five minutes.

Q Where did he go, out the door, or somewhere else in the restaurant?

A. Went outside, out the front door.

Q Was there a point in time when he returned?

A. Very soon.

Q Can you give us an approximation as to how long it was when the fourth individual left and when he came back in?

A. I would say not even five minutes.

Q When he came back in the second time did the fourth individual have anything with him that you could observe?

A. No.

Q Was there a point in time when the fourth individual again left?

A. Yes, right away.

Q You say 'right away' after he came back in on the second occasion?

A. Yes, he just sat down for a moment.

Q And I take it there was a point in time thereafter when the other two gentlemen left?

Q Where were they when you first saw them?

A. They were in the lounge, in the boxcar.

Q Did you see anyone in the Courtroom today that you can identify as being there on that day?

A. Yes, the gentleman with the white hair, and with the glasses, and the gentleman in the blue jacket ... just those two, the light blue jacket.

Q Your Honor, may the record reflect the witness has identified Defendants Hamlin and Woodmansee. And again, where were they?

A. They were in the boxcar.

Q And you don't recall what the third person looked like?

A. I can't definitely recall, no.

Q After they came in did you have occasion to serve them?

A. Yes, I served the man in the blue jacket one drink.

Q How many times did you serve him?

A. I served him once I guess. They had several.

Q Was there anyone else working with you that day?

A. Yes, my hostess.

Q What is her name?

A. Kay Raney.

Q Do you know for a fact if she served them or not?

A. Yes, she did.

Q While you observed them, after they came in, did you observe them move around or do anything?

A. Yes, the man with the blue jacket kept going to the window and looking out the window.

Q And again would you indicate what person you are referring to in the Courtroom?

A. The man in the light blue jacket, second man on the left.

Q Your Honor, may the record reflect he identified Defendant Woodmansee?

THE COURT: It may.

MR. NEIDERMEIER: Q Did you observe him do anything else?

A. No, sir.

Q Were you aware at any time that the three individuals had left?

A. No, sir.

Q While you were there had you observed anyone else come to the area where they were?

A. No, sir.

Q Were you there the entire time?

A. I wasn't, sir. I left about two o'clock ... one thirty, two o'clock I left.

Q And about what time did you get back?

A. Three o'clock.

Q Now after you got back did you have occasion to talk to two law enforcement officers?

A. Yes, I do.

Q Would you indicate who you saw on that occasion?

A. When I initially entered?

Q Yes, please.

A. The gentleman sitting next to the ... right end of the table.

Q Be Mr. Woodmansee?

A. Yes, sir.

Q And would you tell us where you were sitting at the bar ... what part of the bar?

A. Approximately the middle.

Q How far were you from the cash register?

A. Ten-fifteen feet, maybe.

Q And does the Stockyard Inn have something called a Sidecar Lounge attached to it?

A. Yes, sir.

Q How far was the entrance to the Sidecar Lounge from where you were seated?

A. About the same distance.

Q Where was Mr. Woodmansee at the time you first saw him?

A. He was standing at a window, looking out into the parking lot of the Stockyard.

Q And was there a point in time when you saw Mr. Churchill after you got inside?

A. Yes, sir.

Q Would you indicate first of all how long approximately was it after you went inside that you saw Mr. Churchill?

A. Three or four minutes.

Q When you saw Mr. Churchill what did you see him do?

A. He entered the Stockyard and met Mr. Woodmansee.

Q Could you hear any conversation between the two of them?

A. Not at that time, no sir.

Q Did there come a point in time when you could hear conversation?

A. Yes, sir.

Q When was this in relation to any movement of Mr. Woodmansee or Mr. Churchill?

A. Mr. Woodmansee turned around towards the annex, or the addition to the cocktail lounge and shouted or said in a fairly loud voice something to the effect of, 'you aren't going to believe this' and then the other two individuals appeared.

Q Do you see those two individuals about the time he was present then in this Courtroom today?

A. Yes, I do.

Q Would you identify them, please?

A. The two gentlemen sitting at the corner of the table.

Q These gentlemen you are referring to are Mr. Hamlin and Mr. DuBray?

A. Yes, sir.

Q Where were they when you first saw them?

A. I don't think coming from the annex into the ... in other words of the cocktail lounge itself.

Q At this point in time did either Mr. Hamlin or Mr. DuBray say anything?

A. I heard Mr. Hamlin point out to the other two individuals that Mr. Churchill had been sitting in the parking lot for well over an hour.

Q Where did the four individuals go?

A. They then went into the annex, or Sidecar Lounge.

Q How far away from them were you?

A. I would say twenty, twenty-five feet at the most.

Q Could you hear their conversation?

A. No, sir.

Q Was there a point in time when one of the indivuals left?

A. Yes, sir.

Q And who was it?

A. Mr. Churchill.

Q Approximately how long was it after Mr. Churchill came into the lounge?

A. Maybe a matter of a few minutes.

Q Do you see where he went?

A. When he returned?

(Court reconvenes at 12:00 noon)

THE COURT: We will proceed to charge the Jury.

THE CLERK: The Crier will make proclomation for strict silence while the Court gives the charge to the Jury.

(Crier asks for strict silence)

THE COURT:

Ladies and Gentlemen of the Jury: The Court appoints Mr. Nelson as your foreman in this matter.

This case is a criminal proceeding brought by the United States against Bernard Woodmansee, Sr., Jacky E. DuBray, Roy M. Hamlin and Virginia Reynolds. The Grand Jury Indictment in substance charges the defendants in three counts as follows:

Count 1 charges that on or about May 21, 1976 in the District of Vermont, Bernard Woodmansee, Sr., Jacky DuBray, Roy Hamlin, the defendants, unlawfully, willfully and knowingly did transport in interstate commerce from the State of New York to the State of Vermont, securities, that is, traveler's checks, of a value of more than five thousand dollars, knowing the same to have been stolen, converted and taken by fraud, in violation of Section 2314 and 2 of Title 18, United States Code. As it was originally framed,

of course, Virginia Reynolds was also named in the Indictment. As far as that one is concerned, as I have indicated, you do not have to concern yourself as far as she is concerned as to Count 1.

Count 2 charges that on or about May 21, 1976, in the District of Vermont, Bernard Woodmansee, Jacky DuBray, Roy Hamlin, and Virginia Reynolds, the defendants, unlawfully, willfully and knowingly did receive, conceal, store, barter and dispose of securities, that is traveler's checks, of a value of more than five thousand dollars, which were moving as, were a part of and constituted interstate commerce from the State of New York to the State of Vermont, knowing the same to have been stolen, converted and taken by fraud; in violation of sections 2315 and 2 of Title 18, United States Code.

Count 3 charges that from on or about April 1, 1976, up to and including May 26, 1976, in the District of Vermont and elsewhere, Bernard Woodmansee, Sr., Jacky DuBray, Roy Hamlin and Virginia Reynolds, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Sections 2314 and 2315 of Title 18, United States Code.

That it was part of the conspiracy that the conspirators would transport and cause to be transported in interstate commerce from the State of New York to the State of Vermont, securities, that is, traveler's checks of a value of more than five thousand dollars, knowing the same to have been stolen, converted and taken by fraud, in violation of Section 2314 of Title 18, United States Code.

That it was a further part of the conspiracy that the conspirators would receive, conceal, store, barter, sell and dispose of securities, that is, traveler's checks of a value of more than five thousand dollars, which were moving as, were a part of, and constituted interstate commerce, knowing the same to have been stolen, converted and taken by fraud; in violation of Section 2315 of Title 18, United States Code.

Count Three alleges finally that eight overt acts were committed in furtherance of this alleged conspiracy. I am not going to read these to you at this time, as I will refer to them specifically and read them to you later in the charge.

Your verdict should not be influenced by the fact that the defendants were indicted for these offenses by the Grand Jury. An indictment is merely a formal procedural method of accusing a defendant or defendants

of a crime preliminary to trial. Therefore, the indictment is not evidence of any kind against any defendant and does not create any presumption or permit any inference of the defendant's guilt.

The defendants have pleaded not guilty to the charges contained in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact presented by the allegations of the indictment and the denial made by the "not guilty" pleas of the defendants. You are to perform this duty without bias or prejudice as to any party.

At the outset, I instruct you that the guilt or innocence of each defendant must be determined by you separately and independently of any evidence that applies only to one or more of the other defendants. In this regard you will recall that I have cautioned you at various times during the trial that certain evidence is to be applied only to a particular defendant or defendants. You should consider the case of each defendant as if he or she were being tried separately and alone. Because of this requirement I frequently refer in these instructions to the defendants in the singular rather than in the plural sense.

Your verdicts should also be reached and rendered in the same manner. That is, separately as to each

defendant and separately as to each count, based on the evidence as it pertains to each defendant and as to each count.

You have observed that the defendants did not take the stand to testify in their own behalf. They have a constitutional right not to do so. One of the highest constitutional safeguards in our system of criminal justice is that a defendant is not obliged to testify or to produce evidence in his or her own behalf, and he or she may not be called as a witness by the prosecution or compelled to give evidence against himself or herself. The exercise by a defendant of his or her right not to testify raises no presumption of guilt and permits no unfavorable inference of any kind to be drawn. In determining a defendant's guilt or innocence of a crime charged, you are not to consider, in any manner whatsoever, the failure of the defendant to testify as a witness or to produce any evidence in their own behalf.

The law presumes a defendant to be innocent of a crime with which he or she is charged. This presumption of innocence continues throughout the trial, down to the time in the jury room, if that time does arrive, when you are satisfied from all of the evidence, beyond a reasonable doubt, that a defendant is guilty of the crime charged. The law permits nothing but legal evidence

presented before this jury to be considered in support of the charges against the accused. So the presumption of innocence alone is sufficient to acquit the defendant unless you are satisfied beyond a reasonable doubt of the guilt of the defendants from all the evidence in the case.

You have seen and heard the evidence produced in this trial and it is the sole province of the jury to determine the facts of this case, but first I would like to call to your attention certain guides by which you are to evaluate the evidence.

The burden of proof is on the Government to prove each element of the charges against a defendant beyond a reasonable doubt. You cannot find a defendant guilty unless you determine that the Government has established by the evidence each and every essential element of the crimes charged against him or her beyond a reasonable doubt. However, to support a verdict of guilty you need not find every fact beyond a reasonable doubt. You need only find that the crime charged has been proven beyond a reasonable doubt from all of the evidence in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. By proof beyond a reasonable doubt you are not

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to understand that all doubt is excluded. It is rarely possible to prove anything to an absolute certainty. A reasonable doubt means substantial doubt such as would make an honest and sensible and fair-minded person hesitate to act in a serious and important matter wherein ascertainment of the truth is conscientiously being sought.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. I stress to you that the law never imposes upon a defendant in a criminal case the burden or duty of producing any evidence and, since the burden is always upon the Government to prove the accused guilty by proving beyond a reasonable doubt every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the Government.

If, after impartial consideration of all the evidence you can candidly say that you are not satisfied of the guilt of the defendant beyond a reasonable doubt, you should find the defendant not guilty. Conversly, if you are satisfied of his or her guilt beyond a reasonable doubt, you should find the defendant guilty.

There are two types of evidence which a jury may

consider in determining whether or not a defendant is guilty as charged. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, which consists of proof of a chain of circumstances from which a conclusion regarding essential facts in the case may logically be drawn. Regardless of the nature of the evidence, the law requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case. On the other hand, if all the evidence in the case satisfies you beyond a reasonable doubt of the defendant's guilt, you should find him or her guilty.

Circumstantial evidence is legal and proper for you to consider, and you may convict the defendant upon this class of evidence alone if you are persuaded beyond a reasonable doubt of his or her guilt. To do so, however, the circumstances must be such as will lead the guarded discretion of a just and reasonable man to the conclusion that the crime charged has been committed and that the defendant is guilty of its commission.

You will recall that counsel in this matter have stipulated or agreed as to certain facts. You must accept such stipulations as evidence and regard the stipulated facts as proved.

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Any testimony which has been excluded or which has been stricken from the record is not evidence in the case, and you will entirely disregard it in arriving at your verdict. Likewise, the arguments of the attorneys and any statements which they made in their arguments are not evidence, and will not be considered as evidence by you. You will render your verdict only from the evidence in the case which consists of the sworn testimony of the witnesses, the stipulations of counsel, and all exhibits which have been received in evidence. It is your recollection of the witnesses' testimony and not the attorneys' statements as to what that testimony was which will control you in reaching your decision. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from facts which you find have proved, such reasonable inferences as are justified in the light of your own experience.

If you feel that witnesses differed as to what the facts were, it is generally better to reconcile the conflicting testimony, if you reasonably can, upon the theory that all of the witnesses intended to tell the truth. But if you cannot so reconcile the testimony, then you must determine, from all the evidence before you, which of the witnesses is entitled to greater credit.

The credibility of the witnesses and the weight to be given their testimony are questions entirely for your determination. The law is that you are not bound to give the same weight, the same credit, or have the same faith in the testimony of each witness, but you should give the testimony of each witness just such weight, just such credit, and have just such faith in it as you think it is fairly entitled to receive. Consider the appearance of the witness on the stand; their candor or lack of candor; their feeling or bias, if any; their interest in the result of the trial and the reasonableness of the testimony they gave. You should believe as much or as little of the testimony of each witness as you think is proper.

If you find that any of the witnesses in this action who are not parties made statements outside of Court inconsistent with their testimony in Court, as to the facts involved in this case, you may consider these inconsistent statements only for the purpose of impeachment of the witness, or evaluating his or her credibility and not for the purpose of showing the same to be true.

A witness is presumed to speak the truth, but if you reach the conclusion that a witness in the case has willfully or deliberately given false testimony about any material fact, you may reject from consideration all of

his or her testimony, or you may accept such part as you may deem true and disregard that which you may feel is false.

There has been evidence in this case concerning the previous criminal records of one of the witnesses. You may consider this evidence of a previous criminal record as bearing on the credibility of this individual and the weight to be given his testimony. However, such evidence has no relation to the substantive crimes charged and you are not to consider such evidence as bearing on the guilt or innocence of the defendants.

In this case you have heard the testimony of a person who acted as a Government informer. The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage or vindication, must be examined and weighed by you with greater care than the testimony of an ordinary witness. You must determine whether and to what extent the informer's testimony has been affected by interest or by prejudice against the defendants.

There has been testimony introduced in this case which we call 'expert testimony'. In this regard I refer to the testimony of Sergeant George Patch of the Vermont State Police.

An expert is a person who, by reason of special

study, training and experience as to a given subject, has knowledge concerning that subject superior to other people in general. The value of expert testimony or opinion evidence given by an expert depends upon the honesty and ability of the witness, upon the facts used by him as a basis for his opinion, and upon his opportunity for observation.

If the facts used by him for a basis are proved and his qualifications are high, and he is honest and impartial, and has ample opportunity to make proper observations and studies, his opinion may be of great value.

Expert testimony is to be weighed by you with all the other testimony in the case, and the weight of all the expert testimony in this case is for you and you alone to decide.

Having in mind the general guidelines that I have just given you, it now becomes the duty of the Court to instruct you as to the law applicable to your determination in this case.

It is your duty as jurors to follow the law as stated in these instructions and to apply the rules of law so given to the facts as you find them from the evidence. You will not be justified under your oath as jurymen, and ladies, in finding a verdict contrary to

the law as the Court gives it to you.

It is the sole province of the jury to determine the facts in the case. The court does not by any instructions given to you intend to persuade you as to how you should decide any question of fact. It is your duty to decide all the facts from the evidence. All parties have a right to expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and render a just verdict.

Count 1 of the Indictment charges that on or about May 21, 1976, three of the defendants unlawfully, willfully and knowingly transported in interstate commerce from New York to Vermont stolen securities, that is, traveler's checks knowing the same to have been stolen, in violation of 18 United States Code, Section 2314. Count 1 also charges a violation of 18 United States Code, Section 2, which is known as the aiding and abetting statute.

In order to return a verdict of guilty as to Count 1 you must find beyond a reasonable doubt that a defendant either knowingly, unlawfully and willfully transported the traveler's checks in interstate commerce knowing they were stolen, or aided and abetted the commission of that offense as charged in Count 1. In

other words, if you find that a particular defendant did not actually transport the securities, a guilty verdict would only be supported if you find that the defendant aided and abetted a person who transported stolen securities from New York to Vermont, knowing the securities to have been stolen, in violation of 18 United States Code, Section 2314. I shall explain the concept of "aiding and abetting" to you in detail after I instruct you as to the substantive offense.

Section 2314 of Title 18 provides in relevant part that whoever transports in interstate commerce securities of the value of five thousand dollars or more, knowing the same to have been stolen shall be guilty of an offense against the United States.

Before it is possible to convict a defendant of a violation of Section 2314 of Title 18 you must be satisfied that each of three elements of the offense has been proved by the Government beyond a reasonable doubt. These three elements are as follows:

First: That on or about May 21, 1976, the defendant whose guilt you are considering transported securities in interstate commerce.

With respect to this first element you must find that such defendant travelled from the State of New York to the State of Vermont, on or about the date charged in

the indictment, with the securities in his possession. I charge you now that traveler's checks are, in fact, securities.

Possession as used here can be either actual or constructive. Actual possession means that a person knowingly has manual or physical control or custody of the securities, that is, the securities are in his personal possession. However, even if you find that a person transporting the securities did not actually possess the securities while transporting them, this element of the offense is satisfied if you find beyond a reasonable doubt that the person had constructive possession of the securities. A person has constructive possession of securities if he has the power to exercise dominion and control over them.

With respect to the first element, the Government must establish that the defendant acted knowingly and willfully in transporting the securities in interstate commerce.

An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident or some other innocent reason. An act is done willfully if it is done knowingly and voluntarily and with the specific intent to do something which the law forbids. That is, with the purpose to either disobey or

disregard the law.

The term "interstate commerce" means "commerce between one state and another" and would include commerce between any States and the State of Vermont, and would include commerce between New York State and the State of Vermont, or any other State that lies without the borders of Vermont. You are entitled, but need not do so unless you think it is warranted, to draw an inference of interstate commerce from the fact of possession in one state of property recently stolen in another state.

The second element of the offense is that the securities have a value of five thousand dollars or more. In determining value, you may consider the face value of the traveler's checks that have been admitted into evidence, even if it would have been unlikely that the defendant, or any person in a similar situation, could have obtained full value for the traveler's checks.

The third and final element of the offense charged in Count 1 is the knowledge of the person transporting the securities that they were stolen at the time they were transported in interstate commerce. In this regard you may consider the circumstances surrounding the transportation of the securities, if any, the secret or clandestine nature of these transactions, and any other evidence which may bear upon the defendant's knowledge.

It is not necessary that the Government prove to a certainty that the defendant actually knew the securities were stolen. An inference of the existence of knowledge may be drawn from evidence that the defendant was aware of a high probability that the securities were stolen, unless you find that the defendant knew that the securities were not stolen. In addition, the element of knowledge may be satisfied by proof that the defendant deliberately closed his eyes to what otherwise would have been obvious to him. No person can disclaim knowledge merely by closing his eyes to facts which would otherwise be obvious. If you find from all the evidence beyond a reasonable doubt that the defendant had a conscious purpose to avoid learning the source of the traveler's checks, you may infer that he had knowledge that the securities were stolen.

The word "stolen" as used in the statute means acquired or possessed as a result of some wrongful or dishonest act or taking, whereby a person willfully obtains or retains possession of property which belongs to another, without or beyond any permission given, and with the intent to deprive the owner of the benefit of ownership. The unexplained disappearance of carefully handled, closely guarded property, suffices to support an inference of that, but you need not draw such an inference unless you believe

it is warranted.

As I have stated earlier, Count 1 of the Indictment also charges the defendants with violating 18 United States Code, Section 2, which is generally referred to as the aiding and abetting statute.

An aider or abettor within the meaning of this act is one who assists the perpetrator of a crime. If you find that a defendant did not actually commit the substantive violation alleged in Count 1, but that he aided and abetted, as I will explain that concept to you, the commission of such violation, then you may find that defendant guilty as to Count 1.

There are two essential elements to these offenses of aiding and abetting some overt conduct and the intent to violate the law.

With reference to the first element, to aid or abet the perpetrator of a crime requires that the defendant associate himself with the illegal venture, that he participate in it as something that he wishes to bring about, and that he seeks by his action to make it succeed. The defendant's mere association with those who committed the crime or knowledge that the crime was to be committed are not sufficient to establish this offense. You, the jury, must be convinced beyond a reasonable doubt that the defendant was a participant or a substantial assistant in

the commission of the crime rather than merely a knowledgeable spectator.

With regard to the second element of the aiding and abetting offense, I instruct you that the offense which the defendants are accused of committing by Count 1 is one which requires specific criminal intent or a culpable purpose in order to find them guilty.

Thus, if you find that the defendant was a participant or substantially assisted in the offense alleged in Count 1 of the Indictment, you must then decide beyond a reasonable doubt whether the defendants did so willfully and knowingly in a community of unlawful purpose with some other person. I have already defined the words knowingly and willfully for you. An aider or abettor is punishable the same as a principal or one who actually committed the crime, and thus the intent needed to convict the defendant must be the same as would be required to convict the principal.

In other words, an aider and abettor must have the same knowledge and intent required as the principal, thus proof of the defendant's knowledge that the securities had been stolen is necessary to convict of aiding and abetting.

Count 2 of the Indictment alleges that each of the four defendants, Bernard Woodmansee, Sr., Jackey E. DuBray

Roy M. Hamlin and Virginia Reynolds, willfully and knowingly received, concealed, stored, bartered and disposed of traveler's checks of a value of more than five thousand dollars, which were moving as, and were a part of interstate commerce from New York to Vermont, knowing the traveler's checks to have been stolen, in violation of 18 United States Code, Section 2315. Count 2 also charges that defendants aided or abetted the commission of this offense in violation of 18 United States Code, Section 2.

Again, as in Count 1, in order to return a verdict of guilty as to Count 2, you must find beyond a reasonable doubt that the defendant either received, concealed, stored bartered, sold or disposed of the traveler's checks in the circumstances alleged, or you must find beyond a reasonable doubt that the defendants aided and abetted the commission of the substantive offense charged in Count 2, in violation of 18 United States Code, Section 2. In other words, with respect to aiding and abetting, you must find that the defendant aided and abetted a person who received, concealed, stored, bartered, sold or disposed of securities in interstate commerce, knowing that the securities had been stolen, in violation of 18 United States Code, Section 2315.

Section 2315 of Title 18 provides in relevant part that "whoever receives, conceals, stores, barters,

sells, or disposes of securities, of the value of five thousand dollars or more, which are moving as, or which are a part of, or which constitute interstate commerce knowing the same to have been stolen", shall be guilty of an offense against the United States.

Before you can find a defendant guilty of the crime charged in Count 2 you must be satisfied that each of three elements of the offense has been proved by the Government beyond a reasonable doubt. These three elements are as follows:

First: That on or about May 21, 1976, the defendant whose guilt you are considering, received, concealed, stored, bartered, sold or disposed of traveler's checks in interstate commerce, or that the defendant aided and abetted such acts. You may find that the defendant 'received' securities if you believe beyond a reasonable doubt that he accepted or took them into his possession or control.

The possession involved here may be either actual or constructive, as I explained those terms to you briefly. You may find that the defendant 'concealed' securities, if you believe beyond a reasonable doubt that he hid them or secreted them from the knowledge or view of others.

The words 'stores, sells, barters' or 'disposes

of' as used in the statute are used in their customary and usual sense. Again I would remind you the word 'securities' within the meaning of the statute includes traveler's checks.

With respect to the first element, the Government must further establish that the defendant and such other persons performing the acts alleged in Count 2, must have acted knowingly and willfully as I have previously explained these terms to you.

Finally, with respect to the first element of Count 2, I must further explain what is meant by the phrase in the Indictment that the securities were "moving as, were a part of and constituted interstate commerce". I have previously explained the term "interstate commerce" to you. However, further explanation is in order with respect to Count 2.

The Indictment specifically alleges that the securities were moving as interstate commerce from the State of New York to the State of Vermont. This requirement is satisfied if you find that the securities were, in fact, transported or removed from New York to Vermont and that any receiving, concealing or selling of the securities in Vermont was incident to this transportation.

The interstate movement of securities does not necessarily cease to exist once the securities have beeen

transported from one state and have arrived at their destination in another state. Of course, the securities do not continue indefinitely to remain in interstate commerce after the interstate transportation ends, for, after some period of time, depending upon what is done with the securities after the transportation, the movement or location of the securities may become localized with a particular state. However you may find that the securities involved in this case were still moving in interstate commerce at the time they were received, concealed, bartered, or sold in Vermont, if you believe beyond a reasonable doubt that the receipt, concealment, barter or sale in Vermont were so tied upon with the transportation of the securities from New York as to constitute a final or intermediate step in a continuous unlawful scheme.

In this regard the Government need not prove that the defendant knew that the securities were moving in interstate commerce, it must establish only that the securities were still moving in interstate commerce at the time the defendant received, concealed or sold them, as I have just explained.

The second element that must be established beyond a reasonable doubt in order to prove the charge alleged in Count 2 is that the securities involved have a value

of five thousand dollars or more. This is the same as the second element in Count 1, as I have previously explained it to you. The third and final element of the offense charged in Count 2 is the knowledge of the defendant and the person performing the acts alleged in that count, that the securities had been stolen. As to the method of ascertaining the defendant's knowledge, I refer you to the instructions I gave you in Count 1 with regard to this.

I wish to remind you again that Count 2 also charges a violation of the aiding and abetting statute. You will keep in mind that an aider and abetter is one who assists the perpetrator of the crime. You will also keep in mind the instructions with reference to this offense which I gave you in connection with Count 1.

Count 3 of the Indictment alleges that the defendants were members of a conspiracy together with each other and others to commit the offenses charged in Counts 1 and 2 of the Indictment, in Violation of Title 18, United States Code, Section 371. Section 371 is the federal conspiracy statute. It provides in part that if two or more persons conspire to commit any offense against the United States and one or more of those persons does any act to effect the object of the conspiracy, they shall be guilty of an offense against the United States.

In this case the offenses alleged to be the object of the conspiracy are the knowing transportation, receipt, concealment and sale of stolen securities in interstate and foreign commerce, in violation of Title 18, United States Code, Sections 2314 and 2315.

The offense of conspiracy is a separate and distinct charge from the offenses contained in Counts 1 and 2 of the Indictment. Therefore, you need not find any of the defendants guilty of the charges in Counts 1 and 2 to find that a defendant committed the offense alleged in Count 3. Similarly, you may find a violation of the offense alleged in Count 1 and 2 and not the offense of conspiracy alleged in Count 3.

Before you can decide the specifics of this charge I must advise you of some of the basic principles which are involved in the determination of the offense of conspiracy.

A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish by criminal or unlawful means some purpose not in itself criminal or unlawful. The essence of a conspiracy is the unlawful agreement between the conspirators. But it is not necessary to find an express agreement, oral or written, before you can find a conspiracy existed. What must be shown, however,

is that the members in some way impliedly or expressly, came to a mutual understanding. This showing need not be made by direct evidence. It may be, and usually is, proved by circumstantial evidence.

It is not necessary for the Government to prove that the objects of the conspiracy were carried out or that the conspiracy was successful. Conspiracy is punishable whether or not the intended offenses are committed. However, the Government must prove beyond a reasonable doubt that some overt act was committed in furtherance of the conspiracy. This act need not be a criminal act, but must be one which tends to accomplish the plan or conspiracy and must be done in furtherance of the object or purpose of the conspiracy.

The offense of conspiracy is a crime when the unlawful agreement or combination is made, and any single overt act to effect the object of the conspiracy, if thereafter done by at least one of the conspirators, is attributable to all the conspirators for the act of one conspirator done in furtherance of the conspiracy becomes the act of all, just as in our civil law, the act of one partner becomes the act of all partners. Consequently, if an overt act is performed by any co-conspirator, including but not limited to the defendant whose case you are considering, then the conspiracy is complete.

Before you can convict the defendant of the crime of conspiracy to commit an offense or offenses against the United States you must be satisfied beyond a reasonable doubt that each of three elements of the offense has been proved with respect to the defendant. They are as follows:

(1) That the conspiracy charged in the Indictment was willfully formed and was existing at or about the date alleged.

(2) That the defendant knowingly and willfully became a member of the conspiracy.

(3) That one of the conspirators thereafter knowingly committed at least one overt act in furtherance of the conspiracy.

In this case, to satisfy the first element of the offense, the Government must establish beyond a reasonable doubt that the defendants conspired with each other or with one or more persons to commit any one of the offense charged in Counts 1 and 2 pertaining to the transportation, receipt, concealment and sale of stolen securities in interstate commerce. These offenses are the objects of the conspiracy charged in Count 3. The indictment alleges that the conspiracy commenced on or about April 1, 1976, and continued up to and including May 26, 1976. The Government need not prove

that the conspiracy existed over the whole course of time which is alleged in the Indictment. If you feel that within that period all of the elements of this crime have been demonstrated to your satisfaction beyond a reasonable doubt, then the crime becomes complete, and the fact that the Government did not show it was being carried on as early or as long as the Indictment says, in itself is not of any importance as far as the elements of the crime are concerned.

As I pointed out earlier, in order to constitute a violation of this conspiracy count, it is not necessary to show that the conspiracy was successful or that the intended offenses were completed. Furthermore, it is not necessary that the Government prove that the conspiracy actually contemplated violation of each of these statutory offenses. It is sufficient for the purposes of Count 3 if you find beyond a reasonable doubt that it was a part of the conspiracy to commit any one of the alleged offenses.

You must find as the second element that the defendants knowingly and willfully participated in the conspiracy with the intent to further some object or purpose of the conspiracy. By knowingly and willfully I mean that the defendants acted voluntarily and intentionally, with the intent being to disobey or disregard

the law. By joining the conspiracy, I mean that the defendants became a member of it -- mere association or presence with other conspirators is not sufficient to make one a member of the conspiracy. Nor will mere knowledge that a crime is being committed make one a conspirator.

In determining whether any defendant was a party to the conspiracy, each is entitled to individual consideration of the proof respecting him or her, including any evidence of his or her knowledge, or lack of knowledge, his or her status, his or her participation in key conversations, his or her participation in the plan, scheme or arrangements alleged.

The third element of the crime of conspiracy is that one or more of the conspirators during the existence of the conspiracy knowingly committed at least one overt act in an effort to effect some purpose or object of the conspiracy. You must also find that this act or acts follow and tend toward the accomplishment of the plan of the conspiracy.

Eight such overt acts were alleged in the Indictment. The language of the Indictment lists these acts as follows:

(1) On or about May 15, 1976, defendant Virginia Reynolds made a telephone call to the State of New York.

(2) On or about May 15, 1976, defendants Bernard Woodmansee, Sr., and Roy M. Hamlin had a conversation with each other.

(3) On or about May 21, 1976, defendant Virginia Reynolds rented an automobile.

(4) On or about May 21, 1976, defendants Roy M. Hamlin and Jacky E. DuBray travelled to the vicinity of Burlington, Vermont.

(5) On or about May 21, 1976, defendants Bernard Woodmansee, Sr., Jacky E. DuBray, Roy M. Hamlin and Virginia Reynolds met with Michael Churchill in the vicinity of Burlington, Vermont.

(6) On or about May 22, 1976, defendant Bernard Woodmansee, Sr., had a conversation with Michael Churchill.

(7) On or about May 23, 1976, defendant Bernard Woodmansee, Sr., had a conversation with Michael Churchill.

(8) On or about May 23, 1976, defendants BernardWoodmansee, Sr., Jacky E. DuBray and Roy M. Hamlin met with Michael Churchill at the Stockyard Restaurant in Montpelier, Vermont.

You need not find that all of the foregoing overt acts were committed. This element of the offense may be established if you find beyond a reasonable doubt that

one or more of the conspirators during the existence of the conspiracy knowingly committed at least one overt act in an effort to effect some purpose or object of the conspiracy.

In considering the elements of the offense of conspiracy as I have stated them above, you may consider all of the evidence in the case. If you find that each of the elements of the offense has been proved beyond a reasonable doubt with respect to two or more defendants, then you must return a verdict of guilty against those particular defendants. If, however, you are not convinced beyond a reasonable doubt as to the guilt of at least two of the defendants, then you must return a verdict of not guilty as to all of the defendants.

Again I want to suggest to you that while the law is for the Court, and you are to apply the law as given you in these instructions, the finding of the facts in this case is entirely for you. Whatever reference the Court has made to the evidence or pleadings is only for the purpose of making application of the principles of law to the issues in this case, and without any purpose of indicating in the least degree how the Court may think that the case ought to be decided on the facts. That is for you to determine.

The exhibits admitted into evidence in the trial

are for your consideration in your deliberations. We will send all of the exhibits into the jury room with the exception of the tapes. If you wish to hear any of the tapes again, we will replay them for you in the courtroom upon request.

We will also send a copy of the Indictment to you in the jury room for your information.

You must return a verdict of guilty or not guilty as to each defendant as to each count. Your verdict must be unanimous and will be delivered orally by your foreman in response to inquiries made by the Clerk. Gentlemen? (Bench conference)

MR. ONEILL: We do not have any objections to the Charge as such. The only thing, and perhaps we should have covered earlier, was perhaps a request to theCourt of not sending in the traveler's checks unless they are requested.

THE COURT: They are sealed and the Court did consider that, but it is not a situation of drugs. Mr. Kilmartin?

MR. KILMARTIN: We object to that portion dealing with impeachment and by inconsistent statements in that it fails to follow the provisions of Rule 801 of the Rules of Evidence, particularly in reference to Churchill's grand jury testimony.

In addition we object to the portion of the Court's charge dealing with the theft of the traveler's checks, and we call the Court's attention that the Government did not prove because the lack of permissive obtaining of the checks, because it failed to call the third employee who would testify as to having control over and access to them.

In addition Defendant Woodmansee personally requests that I object to the portion of the Charge dealing with whether the defendant took the stand or not.

THE COURT: All right, Mr. Linnan?

MR. LINNAN: Your Honor, I have no additional objections to the Charge, but would request that the Court charge as to statements of one defendant made after the alleged crime being admissable only as to the declarant. There are several of those statements in the evidence.

THE COURT: I think I met that each time they came in.

MR. LINNAN: Yes, but that is my request, Your Honor.

THE COURT: Mr. Kupersmith?

MR. KUPERSMITH: Your Honor, I would request the Court charge in addition something to the effect

that it is not evidence of purposeful behaviour, mere presence, even if coupled with knowledge when the crime is being committed, does not constitute conspiracy or aiding and abetting, and also I would request the Court to charge that mere presence in the vicinity of stolen property does not necessarily constitute possession.

THE COURT: Well, I think both of those requests are sufficiently covered in the charge. Mr. Agel?

MR. AGEL: I have no objectionsand no requests.

THE COURT: Then you do not get any exceptions. Mr. Linnan, I will charge them with regard to statements made after the conspiracy as being against only the declarant and not to be considered against any other members.

(End of Bench conference)

THE COURT: Ladies and Gentlemen,counsel requested and I have agreed to instruct you with reference to one further matter insofar as the case is concerned, and that involves any statement in evidence which may have been made by any member of the conspiracy after the conspiracy stopped, or ceased, or was no longer in existence, is to be considered a statement against the individual who made that only and not as statements as to any other member of the conspiracy.

I refer now specifically to a statement that may

have been made after you find that the conspiracy may have ceased to exist, which, of course, means --- this does not mean you do not have to find there was a conspiracy.

I think the Marshals are already sworn in. We need not swear them. We are going to turn the case over to you twelve ladies and gentlemen who are the jurors in this matter for your deliberation, and I am going to explain to the alternates that customarily at this time we would excuse them. I am going to explain to them and request their indulgence in this particular case, that they remain and that they, of course, will not be locked up with the other jurors, but they will be separate, and I am only doing this for an abundance of caution -- even though the twelve members look remarkably hale and hearty. We have spent a lot of time on this case and it has been a fairly expensive case. We did have a situation one time where one of our jurors during deliberations became incapacitated or indisposed, and I am going to guard against that possibility, so I am sure that you ladies are going to have to enjoy each other's company for a little longer, and with that, ladies and gentlemen ----

MR. KILMARTIN: May we approach the bench?

(Bench conference)

MR. KILMARTIN: Your Honor, I would object to the Court's remark that this has been an expensive, whatever it was, to date.

THE COURT: Oh, come on. Everybody knows that.

MR. KILMARTIN: I want it on the record.

THE COURT: We will note your objection.

Ladies and Gentlemen, you may take the case.

(Jury retired at 12:57 p,m.)

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(Jury returns to the Court at 2:55 p.m.)

THE COURT: Mr. Foreman, we have two enquiries from the Jury. One stating that you would like to have the tapes played for you, and we are prepared to do that. We will in just a minute. We have another one that has been handed which says: "We need an identification list of the exhibits", and I am not quite sure what you mean by that. Maybe you should explain it. You have all the exhibits, I think.

MR. NELSON: Yes, sir, but we would like a listing to associate one with another.

THE COURT: One with another?

MR. NELSON: Can I get specific?

THE COURT: Well, maybe we should have counsel approach the bench. (Bench conference)

(Bench conference)

THE COURT:

The customary way, of course, to that -- I think to have the testimony with regard to exhibits read to the jury. Ihave had a similar request in the past and counsel have been able to get together and agree. I see no reason why we shouldn't ask the jury as to which specific exhibits they are interested in, so we can limit it.

MR. AGEL: Could the Clerk read what it is. She keeps a record.

MR. KILMARTIN: What do they want to know, the six thousand, four thousand?

THE COURT: I will ask them, without indicating specifically.

(End of bench conference)

THE COURT: Without indicating specifically to the Court the purpose for what you want them, would you indicate which exhibits you are interested in, so we can eliminate the ones -- or by description?

A. (Foreman) The brown paper bag that is in evidence.

THE COURT: And that is the only one that you are interested in?

A. (Foreman) That is the main one, yes, sir.

THE COURT: Now do you wish the testimony regarding that exhibit read, or is that what you have in mind?

A. (Foreman) Testimony ... I believe that would do it.

THE COURT: Why don't we listen to the tape, and you can go back to the jury room and make it a little more specific, narrow it down, and if you wish the testimony concerning that exhibit read we can have the reporter find it and read it to you, and perhaps maybe after you have discussed it in the jury room you can be more specific and we can be a little more helpful. We will listen to the tapes at the present time. Mr. Niedermeier, are you going to be the engineer on these? Maybe you had better identify the tape, the conversation specifically.

MR. NIEDERMEIER: The first one is a call on May 15, 1976, made by Michael Churchill to Bernard Woodmansee, Sr.

(Tape is played)

The next one is a call on May 21 by Michael Churchill speaking with Virginia Reynolds.

(Tape is played)

The next one is a call on May 21, by Michael Churchill to Bernard Woodmansee, Sr.,

(Tape is played)

The next is a call from Michael Churchill to Bernard Woodmansee, Sr., on May 21, 1976.

(Tape is played)

The next one is a call on May 22 from Michael Churchill speaking to Virginia Reynolds.

(tape is played)

The next is a call on May 22, 1976, from Michael Churchill to Bernard Woodmansee, Sr.,

(tape is played)

The next call is a call on May 23, 1976, from Michael Churchill to Bernard Woodmansee, Sr.

(tape is played)

THE COURT: All right, ladies and gentlemen, that concludes the tapes. I assume that is satisfactory for your purposes. If you would let us know with a little more specificity as to what you want as far as the paper bag is concerned, we will try to find that portion of that testimony so it can be read to you.

(Jury retires to Jury room)
(Bench conference)

MR. AGEL: I would like to think --- what I understood them to say, they didn't know which exhibit was the brown bag.

MR. LINNAN: They want to know which brown bag

-- there is testimony of two brown bags and only one in evidence.

THE COURT: Is that the way counsel understands it? What I was going to suggest, counsel can refer to notes and confer with the reporter while we are waiting and so we can turn to those areas of the transcript that refer to the brown bags. I think maybe you have the right idea.

MR. LINNAN: I think the testimony concerning that may be as confusing as anything.

MR. KILMARTIN: It comes up more than once in terms of that bag.

THE COURT: Which bag? Is it in evidence?

MR. KILMARTIN: The one that was found in the drawer and presumably was seen by Churchill. Would that be an accurate statement?

MR. ONEILL: I think that is the one. That is definitely the one.

MR. KILMARTIN: The brown bag that came from the Stockyard reportedly was never put in evidence.

THE COURT: Maybe that would answer their inquiry and assist in their deliberations, and if that is the way counsel understands it, and if you wish to frame some language which you agree on, I can get them back in as far as that is concerned. We will take a short recess. (3:15 p.m.)

(In Chambers -- 3:25 p.m.)

MR. LINNAN: For the record, I wanted to take a late exception because I neglected to, at the close of Mr. Oneill's argument, the last few words he said things, in his argument were about those heavy men, in front of the jury --- hiding the bag as he went out in the parking lot to show the nature of his thoughts, and there is absolutely no testimony about that at all. I just want to note that.

THE COURT: You can note it.

(Open Court -- 3:30 p.m.)

THE COURT:

Ladies and Gentlemen, this may or may not be helpful to you, but after you retired to the Jury room counsel had a feeling that perhaps your inquiry had to do with as to which brown paper bag was in evidence, and if that is correct then I can advise you I think it is exhibit number 32, is the brown paper bag.

MR. ONEILL: 33.

THE COURT: You have the exhibits in there?

THE CLERK: 33 is the plastic bag. 32 is the brown paper bag.

MR. ONEILL: The brown paper bag, as I recall,

was in the plastic bag. The brown paper bag was 32, the evidence bag it was in for a while is 33. Anyway, the brown paper bag in evidence is exhibit 32, was the bag which was taken during the search at 63 Susie Wilson Road. It is not the other brown bag which I believe is the one at the Stockyard Restaurant.

THE COURT: Now if that helps you at all, fine. If you need any further information relative to that or something, if you will let us know. Do you have another one?

A. (Foreman) Yes, sir.

THE COURT: All right, again I will ask you to retire to the jury room so I can consult with counsel on this.

(Jury retires to the Jury room)

(Bench conference)

THE COURT: All right, gentlemen, this request is as follows: "We request identification of where the items pictured in Government's 17 and 18 were found". I don't know at this time, of course, what 17 and 18 are, but we will find out.

MR. KILMARTIN: Your Honor, if I can suggest a solution. If the Marshal obtains this I think defendants counsel and Mr. O'Neill can agree.

THE COURT: I think you can ask for exhibit 17 and 18. 17 and 18 are photographs of some of the items found during the search at Susie WilsonRoad.
(Off the record discussion)
(The Jury returns to the Courtroom -- 3:45 p.m.)

THE COURT: Ladies and Gentlemen: Rather than searching the record and reading the testimony to you with reference to what exhibits 17 and 18 show, or where the items shown were found, counsel have agreed as follows concerning that. That the testimony is to the effect, and I am referring to 18, that the brown paper bag in the lower left hand corner was found in the top drawer of the night-stand on the right side. The traveler's checks above that were found in the brown paper bag. The envelope which is circled in red contained eight hundred dollars in traveler's checks, and was also found in the drawer of the nightstand on the right hand side. As far as item 17 is concerned, the only item that counsel is certain of is the envelope on the left hand side with the rubber band around it. It has the figures "one hundred and fifty dollars" on the outside. That contained one hundred and twenty-five two dollar bills, and am I correct that was found in the nightstand on the left hand side of the bed? The other items there is no recollection of counsel where they came from. It doesn't appear to be significant as far as the case is concerned from my

observation, and I think counsel agrees. Is that helpful to you?

A. (Foreman) Yes.

THE COURT: Counsel is agreeable that is a fair statement?

COUNSEL: Yes, sir.

THE COURT: We will return 17 and 18 and you can continue with your deliberations.

(Jury returns to Jury room)

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4:50 p.m. In Chambers

THE COURT: I have made a judgment decision that as far as the alternates are concerned I am going to let them go. I am going to instruct them that they cannot discuss the case with anyone, and it might be necessary if the worst came to the worst that one of them might have to be recalled to serve on the panel, and that would take some time to get them back. I think we can rely on them in that regard, not to discuss the case with anybody and to come back if they had to. I consider this highly unlikely and a remote possibility, but that is what I propose to do. Mr. Kilmartin?

MR. KILMARTIN: Is there some authority for permitting an alternate to go into deliberations

at any point after they have commenced?

THE COURT: There is some.

MR. KILMARTIN: I could see if they had participated somehow in the deliberations.

THE COURT: There is some.

MR. KILMARTIN: I do not presume to tell the Court.

THE COURT: We had another situation. I looked it up. It is certainly not ideal, but it has been done and approved. Anyway, that is what I propose to do. If you have any objections to this procedure please state them now, because I intend to get them into the Courtroom and explain what we are doing and what those circumstances are.

MR. LINMAN: I view of the hour I think the Government should give them one more meal!

THE COURT: Other things, practical things -- they have to be moved, kept separate from the twelve, and if they by any chance go back to the motel they have to get a new set of rooms. That is not what prompts me -- human considerations prompt me.

MR. LINMAN: I have no objection.

MR. AGEL: None.

MR. KILMARTIN: My objection would be based on the fact I am totally unacquainted with whatever case law is developed.

THE COURT: I understand that.

MR. KILMARTIN: And I would object out of ignorance.

THE COURT: I understand that, and should that unlikely eventuality come to pass we would, of course, take another look at the cases, but I recall from another situation we had --- I don't know if it was one Mr. O'Neill was involved in or not, but that is a proper procedure, if needs be, and Mr. Kupersmith?

MR. KUPERSMITH: I am going to go along with Duncan.

THE COURT: All right, why don't you go out and we will get those young ladies in.

(Open Court -- 5:00 p.m.)

THE COURT: I have given this situation of you two young ladies some further thought, and in my considered judgment I think we will handle your situation in a somewhat different fashion. In view of the hour I am going to let you go home with the understanding, and this would be a very remote possibility I am certain, that if something should happen as to one of the jurors

it might be necessary to get you back. Now I understand that in the case of Mrs Barry you would have to come some distance and it would be an imposition, and I guess Mrs. Brown wouldn't have to come quite as far, but I would ask specifically that you not discuss this case with anybody. You are not to consider yourselves discharged at this time, so if you came back and had to engage in deliberations you could honestly tell me, and I would ask you if you discussed it with anybody, and you could honestly tell me you have not. I think it is a very remote possibility. I do apologize for not perhaps thinking of this earlier, but I do want to thank you,in case we do not have to get you back,at this time for your very conscientious attention to this matter. It has been a long twelve days, but you have been very attentive and it is much appreciated.

As far as when you next have to report, the Court cannot advise you as far as that is concerned. I will give you some respite and not get you back in. We will have some more jury work starting next week and you won't be included next week for sure, and quite possibly the following week. We will try to phase you back

in sometime later. I can't tell you exactly when that is, but the Clerk will call you and you just can say that that is the understanding. Mr. Kupersmith?

MR. KUPERSMITH: Your Honor, we have discussed this among ourselves. Would the Court consider it appropriate to issue instructions about reading about the case?

THE COURT: Yes, that is true. There has been some publicity about this case and one of the orders was that you not read anything about it, so in addition to what I have instructed you about talking to anybody, don't read anything about it and if there should be any further publicity or any publicity on the television or mdio please don't listen to it. I will rely on you to follow those instructions. Thank you again. We will look forward to seeing you some time later. We will stand in recess.

(Mrs Barry and Mrs Brown leave)

Court recessed at 5:10 p.m.

(8:20 p.m. -- in Chambers)
(Off the record discussion)

THE COURT:

"We need a clarification from the Judge in

Count 2 and the law as it applies to Virginia Reynolds." I guess all I can do is read them what we say about Count 2.

MR. O'NEILL: Yes, sir.

MR. KILMARTIN: That is what has been taking so long.

(Open Court -- 8:25 p.m.)

THE COURT: Mr. Foreman, we have a note from you reading as follows: "We need a clarification from the Judge of the charge in Count 2 and the law as it applies to Virginia Reynolds." Now in response to that request I will reread to you the charge of the Court as I gave it, indicating, as it indicates that it applies to each defendant. "Count 2 of the Indictment alleges that each of the four defendants, Bernard Woodmansee, Sr., Jacky E. DuBray, Roy M. Hamlin and Virginia Reynolds, willfully and knowingly received, concealed, stored, bartered and disposed of traveler's checks of a value of more than five thousand dollars, which were moving as, and were a part of interstate commerce from New York to Vermont, knowing the traveler's checks to have been stolen, in violation of Title 18 United States Code, Section 2315. Count 2 also charges

that defendants aided or abetted the commission of this offense in violation of Title 18, United States Code, Section 2.

Again as in Count 1, in order to return a verdict of guilty as to Count 2, you must find beyond a reasonable doubt that the defendant either received, concealed, stored, bartered, sold or disposed of the traveler's checks in the circumstances alleged, or you must find beyond a reasonable doubt that the defendants aided and abetted the commission of the substantive offense charged in Count 2, in violation of Title 18, United States Code, Section 2. In other words, with respect to aiding and abetting you must find that the defendant aided and abetted a person who received, concealed,stored, bartered, sold or disposed of securities in interstate commerce, knowing that the securities had been stolen, in violation of Title 18, United States Code, Section 2315." And I won't read section 2315 because you have that before you in the Indictment. "Before you can find a defendant guilty of the crime charged in Count 2 you must be satisfied that each of three elements of the offense has been proved by the Government beyond a reasonable

doubt. These three elements are as follows: First: That on or about May 21, 1976, the defendant whose guilt you are considering, received, concealed, stored, bartered, sold or disposed of traveler's checks in interstate commerce or that the defendant aided and abetted such acts. You may find that the defendant "received" securities if youbelieve beyond a reasonable doubt that he accepted or took them into his possession or control.

The possession involved here may be either actual or constructive, and I explained those terms to you briefly with regard to Count 1." If you want, I can read that to you. "You may find that the defendant "concealed" securities, if you believe beyond a reasonable doubt that he hid them or secreted them from the knowledge or view of others.

The words stores, sells, barters or disposes of as used in the statute are used in their customary and usual sense. Again, the word 'securities' within the meaning of the statute includes traveler's checks.

With respect to the first element the Government must further establish that the defendant

and such other persons performing the acts alleged in Count 2 must have acted knowingly and willfully as I have previously explained these terms to you, but since that was some time ago I will read to you what the terms means. "An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident, or some other innocent reason. An act is done wilfully if it is done knowingly and voluntarily and with the specific intent to do something which the law forbids. That is, with the purpose to either disobey or disregard the law.

Finally, with respect to the first element of Count 2, I must further explain what is meant by the phrase in the Indictment that the securities were "moving as, were a part of and constituted interstate commerce." I have previously explained the term "interstate commerce" to you, however, further explanation is in order with respect to Count 2.

The indictment specifically alleges that the securities were moving as interstate commerce from the State of New York to the State of Vermont. This requirement is satisfied if you find that the securities were, in fact, trans-

ported or removed from New York to Vermont and that any receiving, concealing, or selling of the securities in Vermont was incident to this transportation.

The interstate movement of securities does not necessarily cease to exist once the securities have been transported from one state and have arrived at their destination in another state. Of course, the securities do not continue indefinitely t o remain in interstate commerce after the interstate transportation ends for after some period of time, depending upon what is done with the securities after the transportation, the movement or location of the securities may become localized with a particular state. However, you may find that the securities involved in this case were still moving in interstate commerce at the time they were received, concealed, bartered, or sold in Vermont, if you believe beyond a reasonable doubt that the receipt, concealment, barter or sale in Vermont were so tied up with the transportation of the securities from New York as to constitute a final or intermediate step in a continuous unlawful scheme.

In this regard, the Government need not

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prove that the defendant knew that the securities were moving in interstate commerce, it must establish only that the securities were still moving in interstate commerce at the time the defendant received, concealed or sold them, as I have just explained.

The second element that must be established beyond a reasonable doubt in order to prove the charge alleged in Count 2, is that the securities involved have a value of five thousand dollars, or more. In determining value, you may consider the face value of the traveler's checks which have been admitted into evidence, even if it would be unlikely that the Defendants or any person in similar situation could have obtained full va ue for them.

The third and final element of the offense charged in Count 2 is the knowledge of the Defendant and the person performing the acts alleged in that count, that the securities had been stolen. As to the method of ascertaining the Defendant's knowledge, I refer you to the instructions I gave you in Count 1 with regard to this. Now I will read that for you at this time.

In this regard, you may consider the circumstances surrounding the transportation of the securities, if any, the secret or clandestine nature of these transactions, and any other evidence which may bear upon the defendant's knowledge. It is not necessary that the Government prove to a certainty that the Defendant actually knew the securities were stolen. An inference of the existence of knowledge may be drawn from evidence that the Defendant was aware of a high probability that the securities were stolen, unless you find that the defendant actually believed that the securities were not stolen. In addition, the element of knowledge may be satisfied by proof that the defendant deliberately closed his eyes to what otherwise would have been obvious to him. No person can disclaim knowledge merely by closing his eyes to facts which would otherwise be obvious. If you find from all the evidence beyond a reasonable doubt that the defendant had a conscious purpose to avoid learning the source of the traveler's checks, you may infer that he had knowledge that the securities were stolen.

The word "stolen" as used in the statute,

means acquired or possessed as a result of some wrongful or dishonest act or taking, whereby a person willfully obtains or retains possession of property which belongs to another, without or beyond any permission given, and with the intent to deprive the owner of the benefit of ownership. The unexplained disappearance of carefully-handled, closely guarded property suffices to support an inference of theft, but you must not draw such an inference unless you believe it is warranted.

I wish to remind you again Count 2 also charges violation of the aiding and abetting statute.

An aider or abettor within the meaning of this act is one who assists the perpetrator of a crime. If you find that a defendant did not actually commit the substantive violation alleged in Count 2, but that he aided and abetted, as I will explain that concept to you, the commission of such violation, then you may find that Defendant guilty as to Count 2.

There are two essential elements of to this offense of aiding and abetting some overt conduct and the intent to violate the law.

With reference to the first element, to aid or abet the perpetrator of a crime requires that the defendant associate himself with the illegal venture, that he participate in it as something that he wishes to bring about, and that he seeks by his action to make it succeed. The Defendant's mere association with those who committed the crime or knowledge the crime was to be committed are not sufficient to establish this offense. You, the Jury, must be convinced beyond a reasonable doubt that the Defendant was a participant or a substantial assistant in the commission of the crime rather than merely a knowledgeable spectator.

With regard to the second element of the aiding and abetting offense, I instruct you that the offense which the Defendants are accused of committing by Count 2 is one which requires specific criminal intent or a culpable purpose in order to find them guilty.

I will read that to you again with respect to the aiding and abetting offence. I instruct you the offence the Defendants are accused of committing by Count 2 is one which requires specific intent or culpable intent in order to find them guilty.

Thus, if you find that the Defendant was a participant or substantially assisted in the offense alleged in Count 2 of the Indictment you must then decide beyond a reasonable doubt whether the defendants did so willfully and knowingly in a community of unlawful purpose with some other person. I have already defined the words knowingly and willfully for you. An aider or abettor is punishable the same as a principal, or one who actually committed the crime and thus the intent needed to convict the Defendant must be the same as would be required to convict the principal.

In other words, an aider and abettor must have the same knowledge and intent required as the principal, thus proof of the Defendant's knowledge that the securities had been stolen is necessary to convict of aiding and abetting, --- and that, Ladies and Gentlemen, is the entire charge as to Count 2. I trust that answers your inquiry. If it does you may now resume your deliberations.

(Jury retired at 8:35 p.m. to continue deliberations)

(In Chambers -- 9:40 p.m.)

(The Court reads a memo received from the Jury)

THE COURT: "The last time we were in the Courtroom you read the Grand Jury charges listed in Count 2, and another part dealing with aiding and abetting. This second part is not contained in our copy. May we have it?"

MR. ONEILL: They don't know aiding and abetting is incorporated in reference to Count 2. That is clear enough.

THE COURT: That is my interpretation. The language I would propose to read to the Jury: "It is better if you can reach agreement and render verdicts as to all Defendants and as to all counts in the Indictment. However, it is permissible if you desire to render verdicts individually as to each defendant and each count. I have in mind if you are having difficulty reaching agreement as to some defendant and not others, or to some counts and not others, and wish to report those verdicts you have reached to the Court, you may do so if you desire. I suggest this procedure for your consideration. However, it is better if you can that you reach a verdict on all defendants and on all counts and report them all at one time. Any suggestions?

MR. KILMARTIN: No. I want the Court to understand we would object.

THE COURT: For what reason? For what reason could you possibly object to that? What is the basis, Mr. Kilmartin?

MR. KILMARTIN: The reason would be there is no suggestion by the Jury that the source of their problem or the source of the delay is what the Court infers in that.

THE COURT: The Court does not infer anything. He indicates a method of reporting if they wish.

MR. KILMARTIN: I have made my objection.

THE COURT: You don't wish to cite any authority?

MR. KILMARTIN: No.

(Open court)

THE COURT: Would you bring the Jury in.

(Jury returns to the Courtroom)

THE COURT: Mr. Foreman, you have submitted a message which reads as follows: "The last time we were in the Courtroom you read the Grand Jury charge as listed in Count 2 and another part dealing with aiding and abetting. The second part is not contained in our copy. May we have it?"

Well, the answer to that, Mr. Foreman, is

that the aiding and abetting portion of the United States Code, is that known as Section 2 of Title 18, and means that the particular count you are considering is subject to the aiding and abetting statute --and that I have read to you, what the aiding and abetting statute means. It is not set out specifically in the Indictment, and that is the reason it is as I read it to you. Does that answer your inquiry?

FOREMAN: (Mr. Nelson) Your Honor, the wording seems important to us.

THE COURT: You want me to read it again?

FOREMAN: Is it possible we could have a written copy?

THE COURT: Counsel have any objection?

MR. ONEILL: Government has no objection, Your Honor.

THE COURT: Mr. Kilmartin?

MR. KILMARTIN: Of the entire charge?

THE COURT: No, just aiding and abetting part.

MR. KILMARTIN: We would want an opportunity to review it with the Court first.

THE COURT: Ladies and Gentlemen, we will have to discuss it with counsel to see whether we should send a copy to the Jury room with you. I will do that

and if we agree I will send it in. I will, of course, reread it if you desire.

FOREMAN: That would be our second choice.

THE COURT: There is one other matter I want to call to your attention, and make sure it is clear. I read it as follows:

It is better if you can reach an agreement and render verdicts as to all defendants and as to all counts in the Indictment. However, it is permissible if you desire to render verdicts individually as to each defendant and as to each count. I have in mind that if you are having difficulty reaching an agreement to some defendant and not others, or as to some counts and not others, and wish to report those verdicts you have reached to the Court, you may do so, if you desire. I am merely suggesting this procedure for your consideration at this time, and I do want to stress it is preferable if you can that you reach a verdict as to all defendants on all counts and report them all to the Court at one time.

All right, I will discuss this matter with counsel and advise you which way we are proceeding -- either send you a copy or reread it to you.

You may go in the jury room.

(Jury returns to the Juryroom)

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(Bench conference)

THE COURT: The Court is of the opinion that it has wide latitude as to whether or not to submit any part of the charge to the jury in written form for its consideration. As counsel are aware, it is not the practise in this District, and I do not believe it is the practise in the State Court either. To my knowledge, however, I dc believe it is a permissible procedure. I would not wish to lightly disregard what is the long standing custom in this regard. However, because of the hour and the difficulty the jury seems to be having, I would in this instance be willing to make an exception and send in a copy of the aiding and abetting language, if counsel were agreeable, and if not, reread it to them -- and if I am going to reread it to counsel I might as well get them in and reread it to them at the same time. Mr. Kilmartin?

MR. KILMARTIN: Well, my position would be, Your Honor, that I would, if they are going to have the opportanity to read it, and that may be something the Court is going to do, I would want -- maybe other counsel would like an opportunity to read it ourselves to see if it is the kind

of thing which should sit in the jury room and by perused by them during deliberations, or whether they should have it orally. I can't decide that question on behalf of my client, but I suspect, if the Court is looking to us for guidance ....

THE COURT: .... The Court is not looking to you for guidance. The Court is more or less looking for a reaction.

MR. AGEL: If you are looking for reaction from one of the Defendants, I would have no objection if you submitted it in writing.

THE COURT: Well, it is brief. I think I will reread it to them. (End of bench conference)

(Jury returns to the Courtroom)

THE COURT: Ladies and Gentlemen: I am going to reread the language with reference to aiding and abetting.

FOREMAN (Mr. Nelson) May I say something first?

THE COURT: Yes.

FOREMAN: If there is something we do not understand, may we raise our hand and ask you to repeat it?

THE COURT: Yes. Counts 1 and 2 of the Indictment charge the Defendants with violating Title 18, United States Code, Section 2, which is generally referred to as the aiding and abetting statute.

An aider or abettor within the meaning of this act is one who assists the perpetrator of a crime. If you find that a defendant did not actually commit the substantive violation alleged in Counts 1 and 2, but that he aided and abetted, as I will explain that concept to you, the commission of such violation, then you may find that defendant guilty as to counts 1 and 2.

There are two essential elements to this offense of aiding and abetting some overt conduct and the intent to violate the law.

With reference to the first element, to aid or abet the perpetrator of a crime requires that the defendant associate himself with the illegal venture, that he participate in it as something that he wishes to bring about, and that he seeks by his action to make it succeed. The defendant's mere association with those who committed the crime or knowledge that the crime was to be committed are not sufficient to establish this offense. You, the jury, must be convinced beyond a reasonable doubt that the defendant was a participant or a substantial assistant in the commission of the crime rather than merely a knowledgeable spectator.

With respect to the second element of the aiding and abetting offense, I instruct you that the offense which the defendants are accused of committing by Count 1 is one which requires specific criminal intent or a culpable purpose in order to find them guilty.

Thus, if you find that the defendant was a participant or substantially assisted in the offense alleged in Counts 1 and 2 of the Indictment, you must then decide beyond a reasonable doubt whether the defendants did so willfully and knowingly in a community of unlawful purpose with some other person. I have already defined the words knowingly and willfully for you. An aider or abettor is punishable the same as a principal or one who actually committed the crime, and thus the intent needed to convict the defendants must be the same as would be required to convict the principal.

In other words, an aider or abettor must have the same knowledge and intent required as the principal, thus proof of the defendant's knowledge that the securities had been stolen is necessary to convict of aiding and abetting.

Now that is the entire charge as far as

aiding and abetting is concerned.

All right, assuming that is satisfactory you may return to the Jury room.

(Jury retired at 9:55 p.m.

(The Court calls the Jury back into the Courtroom: 1030 p.m.)

THE COURT: Ladies and Gentlemen: We started the day at nine o'clock, and now have been here thirteen and a half hours, and you have been deliberating for nine and a half hours, which certainly shows you are a conscientious Jury. It seems to the Court that the hour is come when we should cease deliberations for the day, and resume later. I have discussed with counsel and the Court personnel and so on if they are willing to work tomorrow, and they are. They are willing to work starting at nine o'clock, but we realize that there are amongst you probably those with problems as far as attending Church are concerned. If that is not a problem we can start in the morning at nine o'clock. If it is a problem we would probably start, say, twelve-thirty, one o'clock, something like that. By a

show of hands how many would have a problem as far as Church services? (Nobody responds) By a show of hands how many will be willing to recommence deliberations at nine a.m? I guess it is unanimous.

With that thought in mind, ladies and gentlemen, I am going to send you back to the motel. I am going to ask you at this time, all of your deliberations must take place when all of you are present, and that means in this instance in the jury room, and for that reason I am going to ask that you do not discuss the case with each other. I am going to ask that you do not call anybody. I want to make sure that when you come back tomorrow morning your deliberations are right at the same stage they are this evening. Those are my instructions. Please do not discuss the case with one another; do not discuss the case until you return in the morning to resume your deliberations in the jury room. Please understand the reason for not calling anybody. If you need to make a call to inform somebody of something, advise the marshal and he will make the call for you. Have as pleasant an evening as you can under the circumstances. We will see you tomorrow morning at 9 a.m.

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Sunday November 7, 1976.

Jury returns to the Jury room and commences deliberations at 9:00 a.m.

(10:35 a.m.) Jury returns to the Courtroom

THE COURT: Good morning, Ladies and Gentlemen. All right, Mr. Clerk.

CLERK: Mr. Foreman, has the jury reached a verdict?

FOREMAN: We have, sir.

CLERK: On Count 1 as to Defendant Woodmansee,Sr., what is the verdict of the Jury?

A. FOREMAN: Guilty.

CLERK On Count 1, as to defendant Jacky DuBray?

A. FOREMAN: Not guilty.

CLERK: As to Count 1 as to Defendant Roy M. Hamlin, what is the verdict of the Jury?

A. FOREMAN: Guilty.

CLERK: As to Count 2, as to Defendant Woodmansee, what is the verdict of the Jury?

A. FOREMAN: Guilty.

CLERK: As to Count 2, as to Defendant DuBray, what is the verdict of the Jury?

A. FOREMAN: Guilty.

CLERK: As to Count 2, as to Defendant Hamlin, what is the verdict of the jury?

A. Guilty.

CLERK: As to Count 2, as to Virginia Reynolds, what is the verdict of the jury?

A. FOREMAN: Not Guilty.

CLERK: As to Count 3, as to Defendant Woodmansee, what is the verdict of the jury?

A. FOREMAN: Guilty.

CLERK: As to Count 3, as to Defendant DuBray, what is the verdict of the Jury?

A. FOREMAN: Guilty.

CLERK: As to Count 3, as to Defendant Hamlin, what is the verdict of the Jury?

FOREMAN: Guilty.

CLERK: As to Count 3 as to Defendant Virginia Reynolds, what is the verdict of the Jury?

A. FOREMAN: Not Guilty.

THE COURT: Ladies and Gentlemen: Is this the verdict of all of you?

FOREMAN: Yes.

THE COURT: Counsel for the Defendants wish to have the Jury polled?

MR. KILMARTIN: Yes.

THE COURT: Would you poll the Jury.

CLERK: Mr. Nelson, do you concur with the verdict?

A. (MR. NELSON:) Yes, I do.

CLERK: Mrs. Johnson, do you concur with the verdict?

MRS. JOHNSON: Yes, I do.

CLERK: Mr. McNall, do you concur with the verdict?

MR. McNALL: Yes, I do.

CLERK: Mrs. Shea, do you concur with the verdict?

MRS. SHEA: Yes, I do.

CLERK: Mr. Pratt, do you concur with the verdict?

MR. PRATT: Yes, I do.

CLERK: Miss Hejnar, do you concur with the verdict?

MISS HEJNAR: Yes, I do.

CLERK: Mrs. Comeau, do you concur with the verdict?

MRS. COMEAU: Yes, I do.

CLERK: Mr. Godin, do you concur with the verdict?

MR. GODIN: Yes, I do.

CLERK: Mrs Grady, do you concur with the verdict?

MRS. GRADY: Yes, I do.

CLERK: Mrs. Dion, do you concur with the verdict?

MRS DION: Yes, I do.

CLERK: Mrs. Hunt, do you concur with the verdict?

MRS. HUNT: Yes, I do.

THE COURT: All right, thank you very much, ladies and gentlemen for your consciensiously performing your duty with respect to this case. It has been

a long case and I know that there has been inconvenience caused to each of you, but nevertheless, it is the American judicial process.

Now we are going to give you some time off. I can't tell you how much time we are giving off, but we are not going to call you. We have some cases starting this week. We are not going to call you for those. I can't tell you when you will be called. You will hear from the Clerk the next time you have to report. We will give you as much time off and work you in gradually as the term progresses. Again, thank you very much. You may have off, what is left of it, a pleasant weekend.

(Jury retires at 10:45 p.m.)

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THE COURT: As far as Mrs. Reynolds, of course, she is free to go. As to any bail?

THE CLERK: She was released, as I recall, on her own recognizance, Your Honor.

THE COURT: If any arrangements have to be made with regard to bail, of course, they will have to be made tomorrow.

MR. AGEL: Will the Court enter Judgment on the verdict?